(17,709.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 245.

HENRY CLEWS, CHARLES M. FOSTER, AND JAMES B. CLEWS, PETITIONERS,

vs.

MALCOLM M. JAMIESON, ROLAND C. NICKERSON, HARRY F. BILLINGS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 20, 1900.

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a *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1897.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. Clews, Appellants,
vs.
MALCOMB M. JAMIESON, ROLAND C. NICKERSON, HARRY F. Billings, Edwin G. Foreman, Charles Henrotin, *et al.*, Appellees.
No. 533.

Mr. Frank O. Lowden, Mr. Henry D. Estabrook, Mr. Herbert J. Davis, counsel for appellants.

Mr. Horace K. Tenney, Mr. Samuel P. McConnell, Mr. M. Lester Coffeen, Mr. Charles F. Harding, Mr. C. H. Wells, counsel for appellees.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Transcript of record filed August 6, 1898.
Printed record filed Sep. 9, 1898.

OLIVER T. MORTON, *Clerk.*

b In the United States Circuit Court, Northern District of Illinois, Northern Division.

HENRY CLEWS ET AL.
vs.
MALCOMB M. JAMIESON ET AL.
In Chancery.

Transcript of Record.

Grosscup, judge.

Frank O. Lowden, H. D. Estabrook, H. J. Davis, solicitors for complainants and appellants.

Horace K. Tenney, Samuel P. McConnell, M. Lester Coffeen, Charles F. Harding, C. H. Wells, solicitors for defendants and appellees.

1 *Placita.*

Pleas in the circuit court of the United States for the northern district of Illinois, northern division, in chancery sitting, at the United States court-room, in the city of Chicago, in said district and division, before the Hon. Peter S. Grosscup, district judge of the United States for the northern district of Illinois, on Monday, the eleventh day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third year.

S. W. BURNHAM, *Clerk.*

HENRY CLEWS, CHARLES M. FOSTER, and James B. Clews *vs.* MALCOLM M. JAMIESON, ROLAND C. NICKERSON, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conly, and Isaac J. Bloom.	24261.	In Chancery.

Be it remembered that on this day, to wit, the twenty-fifth day of September, 1898, came the complainants in said entitled cause, by their solicitors, and filed in the clerk's office of said court their bill of complaint; which said bill of complaint is in the words and figures following, to wit:

Bill of Complaint. Filed Sept. 25, 1898.

2 Bill of complaint.

To the honorable the judges of the circuit court of the United States within and for the northern district of Illinois, northern division:

Henry Clews, Charles M. Foster and James B. Clews, of the city of New York, and citizens of the State of New York, bring this their bill against Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, of the city of Chicago, and citizens of the State of Illinois, and George A. McClellan, of Kenilworth, Illinois, and a citizen of the State of Illinois, and A. L. Dewar, of Glencoe, Illinois, and a citizen of the State of Illinois, whose names your orators are unable to more fully set forth; Gustavus A. Schwartz, John Dupee, John W. Conley and Isaac J. Bloom, of Chicago, Illinois, and citizens of the State of Illinois.

And thereupon your orators complain and say that they are residents and citizens of the State of New York, and that all said defendants are citizens of the State of Illinois, residing in the northern district thereof, and that this is a suit of a civil nature in which there is a controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand (2,000) dollars.

And further complaining, your orators say that they are a copartnership doing business in the city of New York, buying and selling stocks, bonds and other securities, under the name of Henry Clews & Company; that the defendants Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings constitute a copartnership under the name of Jamieson & Company, conducting the business of buying, selling and exchanging bonds, stocks, and other securities, and also a general brokerage business for the purchase and sale of like properties; that in the city of Chicago several years ago there was organized a volunteer association of stock brokers, and persons engaged in the business of buying and selling stocks, bonds, and securities, which association adopted the name of the Chicago stock exchange, and adopted a constitution and by-laws for the government of said association. Said association was formed for the purpose of opening an exchange where its members could meet together and buy and sell such stocks and
3 securities as should be listed with said exchange, and where its members could make contracts for said sales and purchases under the rules and customs of said exchange. Under the constitution and by-laws of said association the whole government of the exchange was vested in a governing committee composed of the president of the exchange and twenty-four (24) members; and your orators show that during the month of July, 1896, and since, the governing committee duly elected and acting as such were, and now are the defendants, Malcolm M. Jamieson, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. N. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan and A. L. Dewar.

And further complaining your orators show unto your honors that in the month of July, 1896, they directed their brokers in Chicago, Messrs. Schwartz, Dupee & Company, being composed of Gustavus A. Schwartz, John Dupee, John W. Conley and Isaac J. Bloom, to sell on account of your orators at the rooms of the Chicago stock exchange, and in accordance with its rules and customs, seven hundred (700) shares of capital stock of the Diamond Match Company, a corporation, which stock had been duly listed as one of the stocks which might be sold and purchased in said exchange, and your orators directed said Schwartz, Dupee & Company to sell said shares for delivery on the 31st day of August, 1896. On August 3, 1896, said Schwartz, Dupee & Company sold on said exchange to defendants, Malcomb M. Jamieson, Roland C. Nickerson and Harry F. Billings seven hundred (700) shares of the capital stock of the Diamond Match Company, and agreed and contracted to deliver the same to the said Jamieson & Company, or to such persons as might become the assigns of said contract under the rules of said exchange, on the 31st day of August, 1896; and the said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings agreed to accept and receive said stock from said Schwartz,

Dupee & Company, on the 31st day of August, 1896, at the agreed price, two hundred and twenty-two dollars ($222) per share for each and every share of said stock.

And your orators show that said sales were made by the said Schwartz, Dupee & Company in their names, but therein they were acting for and in behalf of your orators, as your orators' agents or brokers.

And your orators further show that on the third day of August, 1896, the manager of the clearing-house of said exchange, being thereto by the rules and by-laws of said exchange duly authorized, delivered to said Schwartz, Dupee & Company a statement showing a sale by said Schwartz, Dupee & Company to the said Jamieson & Company of said shares of stock, and said manager also delivered to said Jamieson & Company a statement showing a purchase by said Jamieson & Company from said Schwartz, Dupee & Company of said stock.

4

And your orators further show that on the 31st day of August, 1896, and during the business hours provided by the rules, by-laws and customs of said exchange, the said Schwartz, Dupee & Company tendered to the defendants Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, certificates for seven hundred (700) shares of stock of the said Diamond Match Company, duly issued by it, and duly endorsed and transferred, so as to vest in the said defendants the title thereto, upon delivery thereof, and the said Schwartz, Dupee & Company then and there offered to carry out said contract of sale, and offered to deliver said shares of stock to the said defendants, but the said defendants refused to accept the same, and refused to carry out said contract of purchase, and refused to pay the said Schwartz, Dupee & Company for said stock.

And further, your orators show that, upon said refusal of said defendants to carry out their contract, the said Schwartz, Dupee & Company informed your orators of said refusal, and on the 11th day of September, 1896, said Schwartz, Dupee & Company in writing notified said defendants Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings that said sale was made by the said Schwartz, Dupee & Company as agents for and on behalf of your orators, and notified said defendants that your orators might rightfully take any proceedings to enforce said contracts of sale, and to make settlement of said transaction. And thereupon, upon the same day, your orators notified the said defendants that your orators would proceed to sell said shares of stock at public auction, to the highest bidder for cash, and that your orators would look to said defendants to pay and settle any difference and any loss or damage accruing to your orators if said stock should sell for less than the price which the said defendants had agreed to pay therefor. And your orators also notified said defendants that in the meantime they held said stock ready for delivery to said defendants upon payment of the amount due on said contracts. But the said defendants utterly refused to pay for and receive said stock, and thereupon your orators proceeded to advertise said stock for sale at public auction.

And thereupon your orators did, on the 22d day of September, 1896, offer the same for sale, at public auction, and the same
5 was struck off to the highest bidder for the sum of one hundred and thirty dollars ($130) per share.

And your orators show that they made every reasonable effort, by advertisement and by bringing notice of said sale before the public, and before brokers and bankers generally in Chicago and vicinity, to induce persons to bid at said sale, but that your orators were unable to obtain a greater sum for said stock than one hundred and thirty dollars ($130) per share.

And your orators further show unto your honors that, on the 31st day of August, 1896, the said shares of stock were worth in the market not to exceed one hundred and thirty dollars ($130) per share, and that your orators have suffered damages to the amount of sixty-four thousand four hundred dollars ($64,400) by reason of the failure of said defendants to accept and pay for said stock, and that the expense of selling the same at auction was the sum of forty-six dollars and seventy-five cents.

And your orators further show, that on the 23d day of September, 1896, they notified said defendants Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings of said sale, and of the amount bid for said stock, and that your orators should hold the said defendants liable for the difference between the price agreed to be paid by said defendants for said stock, and the price bid at said auction, and for all other damages which your orators had sustained by reason of their failure to accept and pay for said stock.

And your orators further show that at the time said contract for the sale of said stock was made upon the stock exchange, the said Schwartz, Dupee & Company, as provided by the rules of the stock exchange, deposited with the clearing-house of said stock exchange the sum of seven thousand dollars ($7,000) in trust as security for the faithful performance on their part and on the part of your orators of said contract of sale, and at the same time the said defendants Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings also deposited with the clearing-house of said stock exchange the sum of seven thousand dollars ($7,000), to be held by the said stock exchange in trust to secure the faithful performance on the part of said defendants of their contract to purchase said stock and to pay for the same; and the manager of said clearing-house, under the rules and by-laws of said Chicago stock exchange, received said sums, and the same now remain in the control and possession of the governing committee of said stock exchange, to wit: the defendants Malcolm M. Jamieson, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, A. L. Dewar, J. M. Adsit, Frank N. Gage, Fred G.
6 Frank, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan.

And your orators further show that on the 24th day of September, 1896, the said Schwartz, Dupee & Company requested the said

Jamieson & Company to consent that the Chicago stock exchange pay to the said Schwartz, Dupee & Company the amounts so deposited to secure the performance of said contract, and offered to credit the said Jamieson & Company with the amount deposited by them, to wit: seven thousand dollars ($7,000), on the damages sustained by reason of the default of said Jamieson & Company. And your orators, in writing, joined in said request and offered upon receipt of said deposit by Schwartz, Dupee & Company to credit the said Jamieson & Company with the amount thereof.

And your orators further show that on the 24th day of September, 1896, the said Schwartz, Dupee & Company notified the defendants above named the governing committee of the Chicago stock exchange that said contracts of sale were made by them on behalf of your orators, and demanded of said the Chicago stock exchange and its governing committee the payment of the amount of said deposits. And your orators in writing concurred in said request.

And further your orators show unto your honors that at and before the transactions hereinbefore set forth, there were in the city of Chicago a large number of holders of stock in the Diamond Match Company, who were very desirous of enhancing the market price and value of the stock in said Diamond Match Company in order that they might profit by such enhancement in value, and a large number of such stockholders agreed among themselves that they would by various means cause said stock to be advertised and brought to the notice of the public; and that they would by various means undertake to create a demand for said stock among investors, capitalists, and financial institutions in order that said holders of stock might profit by the rise in the price and market value thereof. And it was agreed among them that they would mutually assist each other in said undertaking, and in the means to be adopted to enhance the value of said stock, and that they would account to each other for the profits so made by reason of the enhancement of stock held by them, and also by the profits of stock in the future to be purchased by them or some of them so agreeing. That the members so joining in said purpose and undertaking formed what is popularly known as a pool for the purpose of bringing about a rise in the price of the Diamond Match Company stock. That your orators are not informed and cannot set forth the names of the persons constituting said pool, and for that reason can-
7 not make them parties to this bill. But your orators allege that for the purpose of carrying out said agreement and undertaking, the members of said pool authorized or employed or directed certain members thereof to employ brokers to make contracts of purchase upon the said stock exchange, and to increase the dealings in said stock on said exchange, and to buy said stock, and by divers other means to create a demand for said stock, and to cause a rise in the market values and quotations thereof in order that all the members of said pool might thereby profit.

Your orators show that they are informed and believe that said pool was organized, and that the members thereof engaged in said common purpose, but that they have hitherto kept secret the names

of the persons entering into said agreement and undertaking, and have kept secret the exact means adopted by them to carry out said purpose.

And your orators believe and charge the fact to be that although the purchase hereinbefore set forth of seven hundred (700) shares of stock by the defendants Jamieson & Company was made in their own name, and without disclosing whether or not the said Jamieson & Company were purchasing as principals or as agents, that as a matter of fact the said Jamieson & Company in making said purchase were acting for themselves and undisclosed principals or principal; and that in making said purchase they or their undisclosed principals, or both, were acting in pursuance to said agreement and understanding, or by the direction and for the benefit of members of said pool in order that the members of said pool might gain and profit, not only by the enhancement of said stock in said Diamond Match Company, then held by them, but also that they might gain and profit by an expected rise in the market value of said stock so purchased from your orators.

And your orators are informed and believe that all of the defendants or some of them were members of said pool; and that the defendants herein, or some of them, have knowledge or information of the names of the persons composing said pool, and of the agreement between said persons touching the objects thereof, and of the means to be taken to carry out said business, but that all of the defendants refuse to discover the particulars thereof.

And your orators well hoped that no dispute would have arisen touching the said purchase of said stock or the payment therefor, according to said contract, or the payment to your orators of their loss and damage sustained by reason of the default of said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, or touching the right of your orators to receive the moneys deposited in the clearing-house on the said the Chicago stock exchange in trust as security for the faithful performance by the said defendants
8 of their contract, but that the said defendants Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings would comply with the reasonable request of your orators to consent that the said money should be paid to your orators, and that said other defendants would comply with your orators' reasonable request to pay said money to your orators, as in conscience and equity said defendants ought to do.

But now so it is may it please your honors, that the said defendants combining and confederating among themselves and with divers other persons, at present unknown to your orators whose names when discovered — pray they may be at liberty to insert herein with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orators in the premises, they the said defendants absolutely refuse to comply with such requests, and they, the said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, at times pretended that they never made any contract to purchase said stock from Schwartz, Dupee & Company, acting either for themselves or for your orators, and they

at other times pretend that said Schwartz, Dupee & Company never offered to deliver said shares of stock either for themselves or for your orators, and they at other times pretend that your orators have suffered no loss by reason of their failure to perform said contract; whereas, your orators charge the contrary thereof to be the truth. All of which acts, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orators in the premises. In consideration whereof, and forasmuch as your orators are entirely remediless in the premises according to the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.

To the end therefore that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, according to the best and utmost of their respective remembrance, knowledge, information, and belief full, true, direct and perfect answer make to all and singular the premises. And especially that they shall disclose their respective information, knowledge and belief as to the existence of said combination or pool, and of the nature and terms of any agreement between the members thereof relating to the means, methods, or directions to be adopted in attaining the objects of said pool, and what steps were taken in pursuance of said agreements and purposes, but not under oath, oath to said answers being thereby expressly waived. And that the said defendants may come to a fair and just account of all the losses and damages sustained by your
9 orators by reason of the failure of said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings to accept and pay for said stock; and that the defendants may come to a fair and just account of the amounts deposited in said the Chicago stock exchange, as security for the performance of said contracts; and that the said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings may be decreed to pay to your orators the amount of said damages; and that said other defendants may be decreed to pay and deliver to your orators said trust fund, and that your orators may be further and otherwise relieved in the premises according to equity and good conscience.

May it please your honors to grant unto our orators the most gracious writ of subpœna of the United States of America to be directed to the said Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. S. Chapin, George E. Wright, Henry C. Hackney, H. Herbst, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley and Isaac J. Bloom and the rest of the confederates, when discovered, thereby commanding them and every of them, at a day certain, under a certain pain therein to be inserted, personally to be and appear before your honors in this honorable court, and then

and there to answer all and singular the premises and to stand to, perform and abide such order and decree therein as — your honors shall seem meet, and your orators shall ever pray.

ESTABROOK & DAVIS,
Solicitors for Complainants.

HERBERT J. DAVIS, *Of Counsel.*

(Endorsed:) Filed Sept. 25, 1896. S. W. Burnham, clerk.

On the same day, to wit: the twenty-fifth day of September, 1896, a writ of subpœna issued out of the clerk's office directed against the defendants in said entitled cause; which said writ, together with the memorandum thereto attached and the marshal's return thereon endorsed, is in the words and figures following, to wit:

10 *Subpœna. Filed Sept. 30, 1896.*

Chancery subpœna.

UNITED STATES OF AMERICA, *Northern District of Illinois, Northern Division,* } *ss:*

The United States of America to Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, Henry C. Hackney, H. Herbst, F. H. Watris, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. N. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom and A. L. Dewar, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of November next, to answer the bill of complaint of Henry Clews, Charles M. Foster and James B. Clews, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this 25th day of September, in the year of our Lord one thousand eight hundred and ninety-six, and of our Independence the 121st year.

[SEAL.] S. W. BURNHAM, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago, aforesaid, on or before the day to which the

above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

11 *Return of Marshal. Filed Sept.* 30, 1896.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } *ss:*

I have duly served the within writ in the following manner, to wit: Upon Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, John W. Conley, Isaac J. Bloom and John Dupee, by delivering to each of them a true copy of the same this 29th day of September, A. D. 1896; also upon Gustavus A. Schwartz, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, C. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, B. B. Lamb, B. R. Cahn, C. A. Whyland, George A. McClellan, William V. Baker, A. L. Dewar, Charles C. Yoe, William B. Wrenn, F. N. Gage, Fred G. Frank, J. M. Adsit, D. M. Cummings, W. G. Wasmansdorff and Charles A. Wilson, by delivering to each of them a true copy of the same, this 30th day of September, A. D. 1896.

J. W. ARNOLD,
U. S. Marshal.
JOHN A. LOGAN, *Deputy.*

(Endorsed:) Filed Sept. 30, 1896. S. W. Burnham, clerk.

Afterwards, to wit: on the twenty-eighth day of November, 1896, came Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, by their solicitors, and filed in the clerk's office of said court their answer to the bill of complaint, which said answer is in the words and figures following, to wit:

Answer of Jamieson, Nickerson, and Billings. Filed Nov. 28, 1896.

Answer.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL. }
vs.
MALCOLM M. JAMIESON ET AL. }

The separate answer of Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings, defendants, to the bill of complaint of Henry Clews, Charles M. Foster, and James B. Clews.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertain-

ties or other imperfections in the said bill contained, for
12 answer thereunto, or to so much or such parts thereof as these defendants are advised it is or are material or necessary for them to make answer unto, answering, say:

These defendants admit that in the month of July, 1896, they constituted a copartnership under the name of Jamieson and Company, and were conducting a business of buying, selling and exchanging bonds, stocks and other securities, and also a general brokerage business for the purchase and sale of like properties. But they say that in the month of July, 1896, they bought and sold neither bonds, stocks, nor securities for themselves, and that the firm of Schwartz, Dupee and Company, mentioned in said bill as the agents of the complainants, were so informed and well knew. They admit that there was in existence in July, 1896, in the city of Chicago, a voluntary association of stock brokers known as the Chicago stock exchange, and that such association had adopted a constitution and by-laws for the government of said association, and that said association was formed for the purpose of opening an exchange, where its members could meet together to buy and sell such stocks and securities as should be listed with said exchange.

Further answering, they admit that the whole government of the said stock exchange was vested in a governing committee, as set out in the said bill of complaint.

These defendants further answering, say that they do not know whether or not in the month of July, 1896, or at any other time, the complainants directed Gustavus A. Schwartz, John Dupee and John W. Conley, a firm doing business in Chicago, under the title of Schwartz, Dupee and Company, to sell on their account at the rooms of the stock exchange and in accordance with its rules and customs, seven hundred (700) shares of the capital stock of the Diamond Match Company. They know no more regarding said matter, than that the said Schwartz, Dupee and Company, did, from time to time, buy and sell stocks and securities on the said stock exchange; but whether said firm in July, 1896, or at any other time, had any dealings with or any directions from the complainants in the said bill of complaint, these defendants are entirely ignorant, and demand from the complainants strict proof thereof.

These defendants, answering further, deny that on August 3, 1896, said Schwartz, Dupee and Company sold on said exchange to these defendants seven hundred (700) shares of the capital stock of the Diamond Match Company, to be delivered to these defendants, or their assigns, on the 31st day of August, 1896. And they deny that these defendants agreed at that time, on the date mentioned,
or at any other time, to accept and receive from said Schwartz,
13 Dupee and Company seven hundred (700) shares of the capital stock of the Diamond Match Company, at the price of two hundred twenty-two dollars ($222) per share for each and every share of said stock.

Defendants further answering, say they do not know whether or not on the 31st day of August, 1896, the manager of the clearing-house of the said exchange delivered to said Schwartz, Dupee and

Company, a statement, showing a sale by said Schwartz, Dupee and Company to the said Jamieson and Company of said seven hundred (700) shares of stock; and they deny that any such statement was furnished by the said manager to these defendants.

These defendants further answering, say that they admit that on the 31st day of August, 1896, the said Schwartz, Dupee and Company tendered to these defendants certificates for seven hundred (700) shares of stock of the said Diamond Match Company, but whether they were duly issued by the said Diamond Match Company, or whether they were endorsed and transferred so as to vest, if accepted, in the said defendants the title thereto upon the delivery thereof, these defendants do not know. They do admit, however, that tender of said seven hundred (700) shares of stock, and their refusal to accept and pay for the same.

Further answering, these defendants say they do not know whether the said Schwartz, Dupee and Company, informed the complainants of said refusal, or not; but they admit that on the 11th day of September, 1896, Schwartz, Dupee and Company, in writing, notified these defendants that said sale was made by the said Schwartz, Dupee and Company, as agents for and on behalf of the complainants, and notified these defendants that the complainants might rightfully take proceedings to enforce said contract of sale, and to make settlement of said transaction, and that upon the same day the complainants notified these defendants that they would proceed to sell said shares of stock at public auction, to the highest bidder for cash, and that the complainants would look to these defendants to pay and settle any difference, and any loss or damage accruing to the complainants, if said stock should sell for less than the price which the said complainants pretended and still pretend, that the defendants had agreed to pay therefor.

And defendants further answering, say that they informed Schwartz, Dupee and Company, upon the 31st day of August, 1896, and said complainants upon the 11th day of September, 1896, that any contracts which they had made with Schwartz, Dupee and Company, at any time in the month of July, 1896, had been made for and on account of W. H. and J. H. Moore.

14 And these defendants, further answering, say that they do not know whether, on the 22d day of September, 1896, the complainants offered for sale at public auction the said seven hundred (700) shares of stock, and they do not know whether the said stock was sold at one hundred thirty dollars ($130) per share to the highest bidder. And as to both the matter of sale and the amount paid, these defendants demand strict proof.

And these defendants, further answering, say that they do not know what advertisement or what other efforts were made to bring the notice of the said sale, if such occurred, before the public, and before brokers and bankers generally, and as to these matters they demand strict proof.

And these defendants, further answering, say that on the said 31st day of August, 1896, the said shares of stock were worth in the market more than one hundred thirty dollars ($130) per share, and

they deny that the complainants suffered damages to the extent of sixty-four thousand four hundred dollars ($64,400) by reason of the failure of these defendants to accept and pay for said stock.

Further answering, these defendants admit that on the 23d day of September, 1896, the complainants notified them of said sale, and of the amount bid for said stock, and that the complainants proposed to hold these defendants liable for the difference between the price which the complainants aver—but which these defendants deny—was agreed to be paid by these defendants for said stock and the price bid at said auction, and for other damages which the complainants pretend they have sustained by reason of these defendants' failure to accept and pay for said stock.

And these defendants, further answering, deny that at the time of the said pretended contract for the sale of said stock, the said Schwartz, Dupee and Company, deposited seven thousand dollars ($7,000) with the clearing-house of said stock exchange, as security for the faithful performance on their part and on the part of the complainants, of said contract of sale, and that at the same time these defendants deposited with the clearing-house of said stock exchange the sum of seven thousand dollars ($7,000), to be held by the said stock exchange, in trust, to secure the faithful performance on the part of these defendants of any contract to purchase said stock and to pay for the same.

These defendants admit that on the 24th day of September, 1896, the said Schwartz, Dupee and Company, requested these defendants to consent that the Chicago stock exchange pay to the said Schwartz, Dupee and Company seven thousand dollars ($7,000), which they then and there pretended had been deposited on account of the said pretended purchase and sale, and offered to credit these defendants with seven thousand dollars (7,000), and these defendants do not deny that the complainants joined in the request and offer regarding said deposit by said Schwartz, Dupee and Company.

And these defendants, further answering, say that they do not know whether on the 25th day of September, 1896, the said Schwartz, Dupee and Company notified the governing committee of the Chicago stock exchange, that certain contracts of sale with these defendants, were made by them on behalf of the complainants, and then and there demanded of the Chicago stock exchange and its governing committee, the payment to them of certain deposits, or whether the complainants, in writing, concurred in said request.

And these defendants, further answering, say that they neither admit nor deny the averments in the bill of complaint, that there was a large number of holders of stock in the Diamond Match Company in the city of Chicago, and prior to the transactions set out in the said bill of complaint, who were desirous of enhancing the market price, and value of the stock of the said Diamond Match Company, in order that they might profit by said enhancement in value, and that a large number of the holders of said stock agreed that they would, by said means, cause said stock to be advertised

and brought to the notice of the public, and that they would, by various means, create a demand for said stock among investors and capitalists, in order that said holders of stock might profit by the rise in price and market value thereof; and that it was agreed among them that they would mutually assist each other, and account to each other for the profits to be made if the stock were advanced in value; that they formed a pool for the purpose of bringing about a rise in prices of the stock of the said Diamond Match Company; that for the purpose of carrying out such agreement and undertaking, the said holders of stock authorized or employed certain brokers and members of the Chicago stock exchange to make contracts of purchase upon the stock exchange, and to buy said stock, and by divers other means to create a demand for said stock, and to cause a rise in the market values and quotations thereof.

And these defendants, further answering, say that they neither admit nor deny that they acted for any others than J. H. and W. H. Moore, in dealings upon the stock exchange in the Diamond Match Company stock.

These defendants, further answering, say that the only purchase of Diamond Match Company stock made by them from the said Schwartz, Dupee and Company, in the month of July, 1896, or August, to be delivered August 31st, or any day in that month was for fifty (50) shares of stock, and that they are informed and believe that the said fifty (50) shares of stock were not sold by the said Schwartz, Dupee and Company for the complainants herein.

16 And these defendants, further answering, say that on the 3d day of August, 1896, the Chicago stock exchange was closed by order of the governing committee thereof, and so remained closed until the 5th day of November, 1896, and that from the said August 3d to the said November 5, 1896, there were no purchases or sales of stocks or securities upon the Chicago stock exchange.

And these defendants further answering, say that whatever purchases of stock were made, or agreements to purchase, by these defendants, from the said Schwartz, Dupee and Company, acting for themselves, or as agents for the complainants herein, were made in view of, because of, and entirely on account of the constitution, by-laws and rules of the Chicago stock exchange.

And these defendants, further answering, say that it is provided in and by article XVII of the by-laws of the said Chicago stock exchange, of which the defendants and Schwartz, Dupee and Company were members, as follows:

"Should any member neglect to fulfill his contract on the day it becomes due, the party or parties contracting with him shall, after giving notice as required by section 2 of the preceding article, employ an officer of the board to close the same forthwith in the exchange, by purchase or sale as the case may require, unless the price of settlement has been agreed upon, by the contracting parties: In case of a failure of a creditor to close the contract as above, the price shall be fixed by the price current at the time such contract ought to have been closed under the rule. In all cases where an officer may be directed to buy or sell securities under this rule, the name

of the member defaulting, as well as that of the member giving the order shall be announced. No order for the purchase or sale of securities under this rule shall be executed unless made out in writing over the signature of the party giving the order, who shall state the reason therefor; and it shall be the duty of the officer who executes the order to endorse thereon the name of the purchaser or seller, the price and the hour at which the contract is closed, and hand the same to the secretary of the board, who shall within twenty-four hours, ascertain whether the party for whose account the order was given has paid the difference, if any, arising from the transaction; if not the secretary shall report the default to the president. The duty devolved upon the officers of the exchange under this rule shall be performed without charge. No party shall be permitted to supply offers to buy or sell securities closed for his account under the rule; and when a contract is closed under this rule any action of the defaulter, direct or indirect, by which the prompt fulfillment of such contract is delayed, hindered or evaded to the detriment of the other contracting party, shall subject the offending party to suspension for not less
17 than thirty days in the discretion of the governing committee, by a vote of two-thirds of the members present at the meeting. When contracts are closed out under the rule, any member supplying the bid or offer, and not duly receiving or delivering the stock, as the case may be, renders himself liable to prosecution under this article. Should any stock thus sold not be delivered until the next day, the contract shall continue, but the defaulting party shall be liable to pay such damage as may be assessed by the arbitration committee. The same rules as to notice, time and place, that govern defaults in other contracts, shall apply to borrowed securities, which on non-delivery or receipt, must be borrowed or loaned in open market, except in case of actual default in receiving or delivering, after notice to close the loan; then the same are to be bought or sold, as the case may be, for account of the defaulter in the manner provided in this article."

These defendants, further answering, say that the notice provided in section 2 of article XVI, and referred to in said article XVII, reads as follows:

"The notice above referred to shall be either personal or shall be left in writing at the office of the party to be notified, or in case he has no office, then by public announcement, whenever the exchange may be in session."

And these defendants, further answering, say that both buyers and sellers of stock on the stock exchange, were entitled to the protection and advantages afforded by the constitution, by-laws and rules of said stock exchange, and that only upon said stock exchange was it possible, or is it now, in the city of Chicago, to obtain a fair or adequate price for stocks which are covered by contracts of either sale or purchase, made between members thereof.

And these defendants, further answering, say that all contracts for purchase or sales of stock, whether of the Diamond Match Company, or of any other stocks, made between said Schwartz, Dupee

and Company and these defendants, in the month of August, 1896, were made under the by-laws above set forth, and with the agreement that said by-law should be a part of the contract.

And these defendants, further answering, say that during the time said stock exchange was closed, from the said August 3d until November 5, 1896, there were no means of carrying out the contracts made between the members thereof, for the purchase and sale of stocks or other securities, and that in consequence thereof, all purchase contracts failed, or settlements thereof must have been deferred until the opening of said stock exchange.

And these defendants submit to this honorable court, that
18 all and every the matters in complainant's bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the complainants are not entitled to any relief from a court of equity. And these defendants ask that they shall have the same benefit for their defense, as if they had demurred to the complainant's bill, and pray to be dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

MALCOLM M. JAMIESON,
ROLAND C. NICKERSON, AND
HARRY F. BILLINGS,
By TENNEY, McCONNELL & COFFEEN,
Their Solicitors.

TENNEY, McCONNELL & COFFEEN,
Solicitors for Above Defendants.

(Endorsed:) Filed Nov. 28, 1896. S. W. Burnham, clerk.

Afterwards, to wit, on the 4th day of December, 1896, came Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, Geo. E. Wright, Henry C. Hackney, H. Herbst, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, Wm. B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, Geo. A. McClellan and A. L. Dewar, by their solicitors, and filed in the clerk's office of said court their demurrer to the bill of complaint, which said demurrer is in the words and figures following, to wit:

Demurrer. Filed Dec. 11, 1896.

Demurrer.

UNITED STATES OF AMERICA, *Northern District of Ill., Northern Division,* } *ss:*

In the Circuit Court Thereof.

HENRY CLEWS ET AL. *vs.* MALCOLM M. JAMIESON ET AL. } In Chancery.

The demurrer of Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, Henry C. Hackney, H. Herbst, F. H. Watriss, C. C. Adsit, C. A.
19 Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, and A. L. Dewar, certain of the defendants, to the bill of complaint of Henry Clews *et al.*, complainants.

These above-named defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demur to said bill; and for cause of demurrer show, that the complainant has not in and by his said bill made or stated such a case as entitles him in a court of equity to any discovery or relief from, or against, these defendants touching the matters contained in said bill or any of such matters; for the reason that the said complainants have a full, complete and adequate remedy at law against all the defendants in the said bill of complaint for the causes of action set forth in the said bill. And for a further cause of demurrer, to so much of said bill as seeks discovery from these above-named defendants in regard to the formation and operation of a so-called "pool," the said complainants do not, in their said bill, seek any recovery from these above-named defendants, or any of them, as unknown principals in said so-called "pool," and show no right to call upon them, or any of them in a court of equity, for a discovery of said matters and things in regard to said so-called "pool." Wherefore, these defendants demur to the said bill, and to all the matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto; and pray to be dismissed with their reasonable costs in this behalf sustained.

CHESTER M. DAWES,
Solicitor for Above-named Defendants.

I certify that in my opinion the foregoing demurrer of Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend,

S. B. Chapin, George E. Wright, Henry C. Hackney, H. Herbst F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit Frank N. Gage. Fred. G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan and A. L. Dewar, to the bill of complaint of Henry Clews *et al.*, complainants, is well founded in law and proper to be filed in the above cause.

CHESTER M. DAWES,
Solicitor for Above-named Defendants.

Chicago, December 4th, 1896.

20 UNITED STATES OF AMERICA
Northern District of Ill., Northern Division, } ss:

In the Circuit Court Thereof.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } In Chancery.

STATE OF ILLINOIS,
Cook County, } ss:

C. C. Adsit, on oath says that he is one of the defendants in the above-entitled cause and authorized to make affidavit for and on behalf of the other above-mentioned defendants; that he has heard read the foregoing demurrer to the bill of complaint of Henry Clews *et al.* in this suit, and that the same is not interposed for the purpose of delaying said suit, or any proceedings therein.

C. C. ADSIT.

Subscribed and sworn to before me this 5th day of December, 1896.

[SEAL.]

BENJAMIN R. CAHN,
Notary Public.

(Endorsed:) Filed Dec. 4, 1896. S. W. Burnham, clerk.

Afterwards, to wit: on the eighth day of December, 1896, came Gustavus A. Schwartz, John Dupee, John W. Conley and Isaac J. Bloom by their solicitors, and filed in the clerk's office of said court their answer to the bill of complaint, which said answer is in words and figures following, to wit:

Answer of Schwartz, Dupee, Conley & Bloom. Filed Dec. 8, 1896.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

The joint and several answers of Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom, four of the
21 defendants, to the bill of complaint of Henry Clews, Charles M. Foster, and James B. Clews, complainants.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say:

They admit that the complainants are citizens of the State of New York, and that all of the defendants are citizens of the State of Illinois, and that there is in this suit a controversy in which the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars ($2,000).

They admit that complainants are a copartnership, doing business under the name of Henry Clews & Company, and that the defendants Jamieson, Nickerson and Billings constitute a copartnership doing business under the name of Jamieson & Company. They admit that several years ago there was organized a voluntary association of persons engaged in the business of stock brokers, which association adopted the name of the Chicago stock exchange, and adopted a constitution and by-laws for the government of said association. They admit that said association was formed for the purpose of opening an exchange where its members could meet together and buy and sell stocks and securities, and to make contracts for sales and purchases of said stocks and securities under the rules and customs of said exchange. They admit that the government of said exchange was vested in a government committee composed of the president of the exchange and twenty-four (24) members, which committee in the month of July, 1896, and since then, were constituted, as set forth in the bill of complaint.

They admit that in the month of July the complainants directed these defendants, as brokers for complainants, to sell on account of the complainants on the Chicago stock exchange, and in accordance with its rules and customs, seven hundred (700) shares of the Diamond Match Company stock, and that said stock had been duly listed as one of the stocks which might be bought and sold on said exchange, and admit that the complainants directed these defendants to sell the said number of shares for delivery on the 31st day of August, 1896.

Further answering, these defendants say that in compliance with said direction of the complainants these defendants did, on the 25th day of July, on the said exchange, sell and contract to deliver to

various brokers dealing on said exchange various amounts of stock of said Diamond Match Company, to wit: the aggregate amount of five hundred (500) shares, and contracted to deliver to the said brokers, or their assigns, the said five hundred (500) shares of stock, delivery to be made in accordance with the rules of said exchange on the 31st day of August, 1896. And that on the 27th day
22 of July, 1896, in complying further with the order of said complainants these defendants sold, on the said exchange, the further amount of two hundred (200) shares of said stock for delivery on the 31st day of August, 1896.

And further answering these defendants say that on the 3d day of August, 1896, the defendants Jamieson, Nickerson and Billings, with the consent of these answering defendants and by the consent of the brokers to whom said stock had been originally sold, and by the agreement of said Jamieson, Nickerson and Billings became the assignees of said purchasers, and by their agreement and the agreement of the parties to said contracts they, the said Jamieson, Nickerson and Billings, became substituted as the purchasers of said stock, and agreed to receive the same in accordance with the original contract of sale made by these answering defendants, and agreed to pay for said stock on the 31st day of August, 1896, the sum of two hundred and twenty-two dollars ($222) per share for said seven hundred (700) shares of stock.

And further answering these defendants admit that said sales and said contract were made in the names of these defendants, but that these answering defendants in making the same were acting in pursuance of the direction of complainants and on behalf of the complainants, and for their benefit; and that said contracts were made by these answering defendants as agents or brokers for the complainants.

These defendants further answering, admit that on the 3rd day of August, 1896, the manager of the clearing-house of said Chicago stock exchange, and being duly authorized by the rules of said exchange, delivered to these defendants a statement or memorandum of said sales among others, which statement showed that these defendants had sold to the defendants Jamieson, Nickerson and Billings, for delivery on August 31, 1896, eleven hundred and fifty (1,150) shares of Diamond Match Company stock at the price of two hundred and twenty-two — ($222) per share, which amount of stock included the seven hundred (700) shares sold on account of the complainants; the other four hundred and fifty (450) shares being sales made on account of other clients of these defendants. And these defendants admit that on said 3rd day of August the said manager of the clearing-house of said exchange also delivered to said Jamieson & Company the statement showing the purchase by them from these defendants of said shares of stock.

And these defendants further admit that on the 31st day of August, 1896, and within the time provided by the rules, by-laws and customs of said exchange, these defendants tendered to the defendants Jamieson, Nickerson and Billings certificates for seven hun-
23 dred (700) shares of stock of the Diamond Match Company, sold as aforesaid, and also for four hundred and fifty (450)

shares, sold as aforesaid, on account of other clients of these defendants, which said certificates were duly endorsed and transferred so as to vest the title thereto upon delivery thereof; and these defendants then and there offered to carry out their said contracts for the sale of said stock and offered to deliver all of said shares to the defendants Jamieson, Nickerson and Billings upon payment therefor, but that said Jamieson, Nickerson and Billings refused to accept said shares of stock, or any of them, and refused to pay for said stock.

And further answering, these defendants say that thereupon they informed the complainants of the refusal of said Jamieson & Company to accept and pay for said stock. They admit that on the 11th day of September, 1896, they notified said defendants Jamieson, Nickerson, and Billings that the sale of seven hundred (700) shares of stock was made by these defendants, as agents or brokers for and on behalf of the complainants, and notified said Jamieson & Company that the complainants might rightfully take any proceedings to enforce said contracts of sale, and to make settlement of said transaction so far as related to seven hundred (700) shares of said stock; these defendants being unwilling to commence any proceedings in their own names.

Further answering, these defendants say that they have no personal knowledge as to whether the complainants notified Jamieson & Company that they would proceed to sell said shares of stock at public auction and look to Jamieson & Company to pay any loss or damage on account of the refusal of said Jamieson & Company to accept the same, but these defendants are informed and believe that the complainants did so notify said Jamieson & Company.

Further answering, these defendants say they admit that the complainants did proceed to advertise said sale at public auction, and did, on the 22d day of September, 1896, offer the same for sale at public auction, and that on said day complainants did offer for sale seven hundred (700) shares of stock of the Diamond Match Company, said stock being evidenced by the certificates of the said Diamond Match Company, being the same certificates tendered by these defendants on August 31, 1896, and that these defendants admit that on the 22d day of September, at public auction, the shares being offered for sale to the highest bidder for cash, were struck off to the highest bidder therefor, the highest bid being the sum of one hundred and thirty dollars ($130) per share.

Further answering, these defendants say they have no personal knowledge as to what efforts were made by the complainants to bring notice of said sale before the public, except that the
24 defendants admit that said sale was advertised by circular letters and by notices in the newspapers circulating in the city of Chicago.

And these defendants further answering, say they have no knowledge as to whether the complainants on the 23d day of September notified the defendants, Jamieson & Company, of said sale at auction, except by information received from the solicitors of said complainants.

Further answering, these defendants admit that at the time said contracts for the sale of said stock were made upon the stock exchange these defendants, as provided by the rules of said exchange, deposited with the clearing-house of said Chicago stock exchange the sum of seven thousand dollars ($7,000.00), and at the same time the said defendants Jamieson, Nickerson, and Billings also deposited in said clearing-house the sum of seven thousand dollars ($7,000.00). They admit that said sums, to wit: fourteen thousand dollars ($14,000.00), now remain on deposit in the clearing-house aforesaid, in trust, as security for the protection of said contracts. They admit that said sums were received by the manager of the said Chicago stock exchange, and are now in the control and possession of the governing committee of said stock exchange, as a trust fund to secure the performance by the parties to said contracts respectively of their obligations under said contracts of purchase and sale. And further answering in this behalf, these defendants say that they advanced the said sum of seven thousand dollars ($7,000.00) on account of the complainants and charged the complainants with said amount, there being at the time an open book account between these defendants and said complainants, and that these defendants look to complainants to reimburse them for the amount so advanced.

Further answering, these defendants admit that on the 24th day of September, 1896, they requested, in writing, the said Jamieson & Company to consent that the Chicago stock exchange should pay to these defendants the amount so deposited to secure the performance of said contract, and offered to credit the said Jamieson & Company with the amount deposited by them, to wit: seven thousand dollars ($7,000.00), on account of the damages sustained by reason of the default of said Jamieson & Company, and that the complainants joined in said request. They admit that on the 24th day of September they notified the governing committee of the stock exchange that said sales on the exchange of said seven hundred (700) shares of stock, were made by these defendants on behalf of the complainants, and requested the said Chicago stock exchange and its governing committee to pay to these defendants the amount of said deposits, and that the complainants joined in said request.

25 Further answering, these defendants say they admit that in the contracts for the purchase of said stock on the Chicago stock exchange the said Jamieson & Company acted in their own names, and did not disclose whether or not they were acting as agents or on their own behalf.

They admit that the defendants Jamieson, Nickerson and Billings refused to consent to the payment, by the governing committee, of the amount deposited in the clearing house of said exchange, as aforesaid, in trust, to secure the parties to said sale against loss by reason of failure to comply with said contract. All which matters and things these defendants are ready to maintain and prove as this honorable court shall direct.

JOHN DUPEE.
GUSTAVUS A. SCHWARTZ.
JOHN W. CONLEY.
ISAAC J. BLOOM.

(Endorsed:) Filed Dec. 8, 1896. S. W. Burnham, clerk.

Afterwards, to wit: on the twenty-fourth day of December, 1896, came the complainants in said entitled cause by their solicitors, and filed in the clerk's office of said court their replication to the answer of Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, which said replication is in the words and figures following, to wit:

Replication. Filed Dec. 24, 1896.

Replication.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

The replication of Henry Clews, Charles N. Foster, and James B. Clews, complainants, to the separate answer of Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings, defendants.

These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by
26 these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

ESTABROOK & DAVIS,
Solicitors for Complainants.

(Endorsed:) Filed Dec. 24, 1896. S. W. Burnham, clerk.

Afterwards, to wit: on the eighth day of February, 1897, in the December term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Hearing on Demurrer.

Order.

Circuit Court of the United States, Northern District Illinois, Northern Division.

Present: Hon. Peter S. Grosscup, district judge.

MONDAY, *February* 8, 1897.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

Now come the parties by their solicitors. Now comes on to be heard the demurrer to the bill of complaint herein. The court, after hearing the arguments of counsel in full, takes the matter under advisement.

Afterwards, to wit, on the first day of March, 1897, in the December term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

27 *Order Overruling Demurrer. Filed M'ch* 1, 1897.

Order.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MONDAY, *March* 1, 1897.

Present: Hon. Peter S. Grosscup, district judge.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

The court having considered and being now fully advised in the premises, it is ordered that the demurrer filed herein to the bill of complaint be and the same is hereby overruled, and rule on the defendants to answer within twenty days from this date.

Afterwards to wit: on the sixth day of March, 1897, there was filed in the clerk's office of said court a certain opinion delivered orally by Judge Grosscup, which said opinion is in the words and figures following, to wit:

Opinion by Judge Grosscup. Filed March 6, 1897.

Opinion.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM JAMIESON ET AL. } 24261.

MARCH 1, 1897.

GROSSCUP, *J.* (orally):

This is a demurrer to the bill on the ground that the bill does not show a cause cognizable in equity. The bill shows that the plaintiffs sold on the Chicago stock exchange to the defendants, in accordance with the rules and customs of the exchange, 700 shares of the capital stock of the Diamond Match Company, one of the stocks listed on the stock exchange; that the purchase price of the stock was $222 per share, and that the plaintiffs, through their brokers, tendered to the defendants thereafter certificates for the 700 shares of such stock, duly endorsed and transferred, to invest the defendants with title thereto, and on their part, to then and there carry out the contract. But that the defendants refused
28 this tender and refused to carry out their contract of purchase. That, thereafter, agreeably to the rules of the stock exchange, these 700 shares of stock were put up at public auction and were sold, without having been advertised, in the manner best calculated to bring the sale to the attention of the public purchasing that character of securities, for $130 per share, and that this $130 per share was the then fair market value of the stock; that the difference between the contract price and the price procured for such certificates at that sale was in the neighborhood of $6,500, which is the amount of damage suffered by the plaintiffs on account of the defendants' failure to abide by their contract.

The bill then alleges that, under the rules of the stock exchange, the defendants at the time of the contract of purchase, and also the plaintiffs at the same time, deposited with the stock exchange, the sum of $7,000 in trust, as security for the faithful performance on their part of the contract, and that this sum of $7,000 is now in the hands of the committee, or of the stock exchange, subject to the order of the committee. The bill charges that one, at least, of these defendants is a member of that committee, and that the committee refused to deliver to the plaintiffs this sum of $7,000 on account of the damage they have suffered on account of the contract price of the sale of such stock.

The bill then asks that this committee and the defendant Jamieson be required to pay over this sum of $7,000. The bill proceeds entirely upon the theory that the fund in the hands of the committee of the stock exchange is a trust fund and therefore that its disposition is subject to the decrees of the court sitting in equity.

I must presume upon a consideration of the demurrer to this bill—the demurrer admitting all the facts of the bill—that the

transaction between the plaintiffs and the defendants was a lawful one; in other words, that the parties to this contract intended in good faith to purchase and to sell in pursuance thereof, to deliver and to accept the certificates of stock in question, and that it was not in any respect tainted with gambling.

My attention on the argument was called to the rules of the stock exchange, but except as those rules are set out in the bill they are not properly before the court, for the consideration of this case is solely upon the averments of the bill.

In view of that I have concluded that the bill *prima facie* sets out a sufficient cause to require an answer, and I will, therefore, over-rule the demurrer.

(Endorsed:) Filed March 6, 1896. S. W. Burnham, clerk.

29 Afterwards, to wit: on the first day of April, 1897, came E. G. Foreman, Charles Henrotin *et al.* and by their solicitors filed in the clerk's office of said court their answer to the bill of complaint, which said answer is in the words and figures following, to wit:

Answer of Foreman, Henrotin, et al. Filed April 1, 1897.

Answer.

UNITED STATES OF AMERICA, *Northern District of Ill.*, } *ss:*

In the Circuit Court Thereof.

HENRY CLEWS ET AL. *vs.* JAMIESON ET AL. } 24261. In Chancery.

The answer of E. G. Foreman, Charles Henrotin, A. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, Henry C. Hackney, H. Herbst, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. C. Wasmansdorff, George A. McClellan, and A. L. Dewar, certain of the defendants, to the bill of complaint of Henry Clews *et al.*, complainants.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer thereunto, say:

These defendants admit that the Chicago stock exchange was formed for the purpose of opening an exchange where its members could meet together to buy and sell stocks and securities listed with said exchange, and where its members could make contracts for

said sales and purchases under the rules and customs of said exchange; that in the month of July, 1896, they, together with Malcolm M. Jamieson, constituted the governing committee of the said Chicago stock exchange.

These defendants further admit that on or about August 3, 1896, said Schwartz, Dupee & Company, deposited with the clearing-house of said stock exchange the sum of seven thousand dollars in trust as security for the faithful performance of a certain contract for the sale of seven hundred shares of the capital stock of
30 the Diamond Match Company to Jamieson & Company, and that said Jamieson & Company also deposited with said clearing-house of said stock exchange the sum of seven thousand dollars to be held by said stock exchange in trust to secure the faithful performance on the part of said Jamieson & Company of their contract to purchase said stock and to pay for the same; that said sums are now in the possession of these defendants as the governing committee of said stock exchange; that both said Schwartz, Dupee & Company, and said Jamieson & Company are members of said stock exchange, and deposited said sums under the constitution and by-laws of the said stock exchange, a copy of which constitution and by-laws is hereto attached marked "Exhibit A," and made a part of this answer.

These defendants further answering, say: That they are ignorant as to the truth or falsity of all the other matters and things in said bill set forth, and leave the said complainants to the strict proof of said facts.

These defendants, further answering, deny that the complainant is entitled to the relief, or any part thereof, in the said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to said bill of complaint, and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

CHESTER M. DAWES,
Solicitor for Above-named Defendants.

Chicago, March 31, 1897.

(Endorsed:) Filed April 1, 1897. S. W. Burnham, clerk.

Afterwards, to wit: on the sixth day of April, 1897, came the complainants in said entitled cause by their solicitors and filed in the clerk's office of said court their replication to the answer of E. G. Foreman *et al.*, which said replication is in the words and figures following, to wit:

Replication. Filed April 6, 1897.

31 Replication.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

HENRY CLEWS ET AL.
vs.
JAMIESON ET AL. } 24261.

The replication of Henry Clews, Charles M. Foster, and James B. Clews, complainants, to the joint answer of E. G. Foreman, Charles Henrotin, A. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, Henry C. Hackney, H. Herbst, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. C. Wasmansdorff, George A. McClellan, and A. L. Dewar, defendants.

These repliants saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants, for replication thereunto, say that they will aver, maintain and prove their bill of complaint to be true, certain and sufficient in the law, to be answered unto; and, that the answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants, without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied, is true. All which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

ESTABROOK & DAVIS,
Solicitors for Complainants.

(Endorsed:) Filed April 6, 1897. S. W. Burnham, clerk.

32 Afterwards, to wit: on the fourth day of May, 1897, in the December term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry to wit:

Order of Reference.

Order of May 4, 1897.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261. In Chancery.

Now come the parties by their solicitors on motion of complainants. It is ordered by the court that this cause be referred to Elijah B. Sherman, Esq., one of the masters in chancery of this court to take proofs and report the same with his conclusions thereon.

Afterwards, to wit: on the 22nd day of January, 1898, there was filed in the office of the clerk of said court a report of the master in chancery, Elijah B. Sherman, of his conclusions, which said report is in words and figures following, to wit:

Master's Report. Filed Jan. 22, 1898.

Master's report of findings of fact and of law.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS
vs.
MALCOLM M. JAMIESON, ROLAND C. NICKERSON, HARRY F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom, of Chicago, Illinois. } 24261.

To the judges of said court:

The undersigned, master in chancery of said court, to whom by an order entered therein on the 4th day of May, 1897, the
33 above-entitled cause was referred to take proofs and report the same to the court, with his conclusions thereon, respectfully reports:

That said cause was set down for hearing before the undersigned, as such master, for the purposes in said order of reference specified on the 8th day of June, 1897; there appeared Estabrook & Davis, solicitors for complainants, and Mr. S. P. McConnell, of the firm of Tenney, McConnell & Coffeen, solicitors for defendants; that testimony was taken on behalf of the respective parties on that day, and

divers days thereafter, to which said hearing was from time to time adjourned; which, together with the exhibits therein referred to is made a part hereof and is herewith returned into court; that having considered the pleadings in said cause, and the evidence so taken as aforesaid, and having heard arguments of counsel, the master finds as follows:

Provisions and By-laws, Chicago Stock Exchange.

Findings of fact.

I.

That since the year 1882, there has existed and now exists in the city of Chicago, a voluntary association, known as the Chicago stock exchange, composed of brokers having places of business in the vicinity of said exchange in the city of Chicago, who, on due application and recommendation and posting, are elected to membership by the governing committee, consisting of the president of the exchange, and twenty-four members, which governing committee is elected by a ballot at the annual meeting in each year; that the whole government of the exchange is vested in said governing committee, the president of said exchange being also its president, and being charged with the duty of seeing that the provisions of the constitution and by-laws thereof are enforced; that every member is required to sign the constitution and by-laws of said exchange, or assent thereto in writing and pledge himself to abide thereby, and by all rules theretofore or thereafter to be adopted; that the constitution, by-laws and rules of said exchange in force during the last half of the year 1896 contained, among other things, the following provisions:

ARTICLE I.

Title of the Association.

The title of this association shall be "The Chicago stock exchange."

34 ARTICLE II.

Government of the Exchange.

The whole government of the exchange shall be vested in a governing committee composed of the president and twenty-four members, elected in the manner hereinafter provided.

ARTICLE VI.

Duties of President and Vice-President.

It shall be the duty of the president to see that the several provisions of the constitution and by-laws are enforced, and to have a general care of the interests of the exchange. He may preside over the exchange whenever he may elect to do so, and he shall be president of the governing committee.

* * * * * * *

ARTICLE XIII.

Place of Business—Partnership and Dissolutions.

SECTION 1. Every member must have in the vicinity of the exchange a place of business other than the exchange, where comparisons may be made at any time during the day after the expiration of one hour from the time of the transaction, and where notices may be served; and it shall be the duty of every member to keep filed with the secretary a written notice designating such place of business, and similarly to give notice of any change thereof. Any member neglecting to comply with this rule may be considered in default of his contracts, and such contracts may be closed out according to article XVII of the by-laws.

* * * * * * *

ARTICLE XV.

Suspended Members—Readmission—Claims of Creditors, etc.

SECTION 1. Any member who fails to comply with his contracts, or who becomes insolvent, shall be suspended until he has settled with his creditors. Such members shall immediately inform the president in writing that he is unable to meet his engagements, and it shall be the duty of the presiding officer, thereupon, to give notice from the chair of the suspension of such member. The secretary shall record the failure of such member in a book kept for
35 that purpose. In default of giving such information, the party, in application for readmission, shall not be entitled to a reference of his case to the committee on admission, unless two-thirds of the governing committee present shall vote in favor of such reference.

* * * * * * *

ARTICLE XVII.

Fictitious Sales, Bids, and Offers.

SECTION 1. No fictitious sales shall be made. Any member contravening this section shall, upon conviction, be suspended by the governing committee.

SEC. 2. Any member who shall make fictitious or trifling bids or offers, or who shall offer to buy or sell any stock or security other than Government bonds, at a less variation than one-eighth of one per cent. shall, upon conviction, be subject to suspension, or such other penalty as the governing committee shall impose.

ARTICLE XVIII.

Payment and Deliveries in Certain Cases to be Simultaneous.

In all deliveries of stocks, bonds, etc., the party delivering shall have the right to require the purchase-money to be paid at the time and place of delivery.

* * * * * * *

ARTICLE XXIX.

Any member of this exchange who is interested in, or associated with, or whose office is connected directly or indirectly by wire or other method or contrivance, with any organization, firm or individual engaged in the business of dealing in differences or quotations on the fluctuations in the market price of any commodity or security without a *bona fide* purchase or sale of said commodity or security in a regular market or exchange shall, on conviction thereof, be deemed to have committed an act or acts detrimental to the interest and welfare of the exchange.

36 BY-LAWS.

ARTICLE I.

Hours of Business.

SECTION 1. The exchange shall be open for the transaction of business upon every business day from 10 a. m. until 2 o'clock p. m.

* * * * * * *

ARTICLE IV.

No sale of securities shall be made on which a deposit shall be offered as the limit of liability.

Any member guilty of dealing, or offering to deal, with a person not a member, in the rooms of the exchange, shall be fined fifty dollars, without excuse or appeal, and for a repetition of the offense, shall be suspended for a term not exceeding sixty days.

* * * * * * *

ARTICLE VII.

Hour for the Delivery of Securities—Payments.

SECTION 1. All deliveries of securities must be made between 11 a. m. and 1.30 o'clock p. m., or the buyer may demand that they shall lie over until the next day without interest, when they shall be delivered before 10.30 o'clock a. m., and when deliveries are not made by that time the contract may be closed under the rule after due notice to the defaulting party as provided in article XVII of the by-laws. Such notice must be given, however, not later than 10.45 o'clock a. m., and the contract must be closed without delay unless the time for so doing be extended by mutual consent. In all cases certified checks on national or State banks must be given in payment of all securities delivered.

In the absence of any notice or agreement, the contract shall continue without interest until the following day, when the same rule shall apply. In every case of non-delivery, however, the party in default shall be liable, in addition for the damages that may accrue.

SEC. 3. This rule shall apply to borrowed or loaned securities. When a sale has been made for cash after 1 o'clock p. m. the seller shall have until 2 p. m. to make his delivery.

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ARTICLE XVI.

Mutual Deposits on Contracts.

SECTION 1. In any contract either party may call at any time during the continuance of the same for a deposit of ten dollars per share upon the par value of the securities bought and sold; and whenever the market price of the securities shall change so as to reduce the margin of said deposit, either way below the ten dollars, either party may call for a deposit sufficient to restore the margin to ten dollars, and this may be repeated as often as the margin may be so reduced. In all cases where deposits are called they shall be made within one banking hour from the time of such call.

SEC. 2. In case either party shall fail to comply with the demand for a deposit in accordance with the provisions of this article, the party calling, after having given due notice, may repors the default to an officer of the exchange, who shall repurchase or resell the security forthwith in the exchange, and any difference that may accrue shall be paid over to the party entitled thereto. The notice above referred to shall be either personal or shall be left in writing at the office of the party to be notified, or in case he has no office, then by public announcement whenever the exchange may be in session.

* * * * * * *

ARTICLE XVII.

Default—Closing Contracts under the Rule.

Should any member neglect to fulfill his contract on the day it becomes due, the party or parties contracting with him shall, after giving notice as required by section 2 of the preceding article, employ an officer of the board to close the same forthwith in the exchange by purchase or sale as the case may require, unless the price of settlement has been agreed upon by the contracting parties. In case of a failure of a creditor to close the contract as above, the price shall be fixed by the price current at the time such contract ought to have been closed under the rule. In all cases where an officer may be directed to buy or sell securities under this rule, the name of the member defaulting, as well as that of the member giving the order, shall be announced. No order for the purchase or sale of securities under this rule shall be executed unless made out in writing over the signature of the party giving the order, who shall state the reason therefor; and it shall be the duty of the officer who executes the order to endorse thereon the name of the

38 purchaser or seller, the price and the hour at which the contract is closed, and hand the same to the secretary of the board, who shall within twenty-four hours ascertain whether the party for whose account the order was given has paid the difference, if any, arising from the transaction; if not, the secretary shall report the default to the president. The duty devolved upon the officers of the exchange under this rule shall be performed without charge. No party shall be permitted to supply offers to buy or sell

securities closed for his account under the rule; and when a contract is closed under this rule, any action of the defaulter, direct or indirect, by which the prompt fulfillment of such contract is delayed, hindered or evaded, to the detriment of the other contracting party, shall subject the offending party to suspension for not less than thirty days in the discretion of the governing committee, by a vote of two-thirds of the members present at the meeting. When contracts are closed out under the rule, any member supplying the bid or offer, and not duly receiving or delivering the stock, as the case may be, renders himself liable to prosecution under this article. Should any stock thus sold not be delivered until the next day, the contract shall continue, but the defaulting party shall not be liable to pay such damage as may be assessed by the arbitration committee. The same rules as to notice, time and places that govern defaults in other contracts shall apply to borrowed securities, which on non-delivery or receipt, must be borrowed or loaned in open market, except in case of actual default in receiving or delivering after notice to close the loan; then the same are to be bought or sold, as the case may be, for account of the defaulter in the manner provided in this article.

* * * * * * *

ARTICLE XXVIII.

No person other than a member shall have a right to file any claim against any member of the exchange.

Clearing-house Rules.

SECTION 1. Under the following regulations transactions may be made for "the account" in any securities listed for that purpose dealt in at the exchange.

SEC. 2. Deliveries of cash, stock or transactions for "the account" shall be made on the last day of each month. Provided, however, should the last day of any month occur on a holiday, or on a day when the exchange is closed for business, then in that case deliveries shall be made on the first business day preceding.

SEC. 3. All purchases and sales "for the account" shall be
39 entered upon the blanks furnished by the manager sealed for that purpose, and said blanks properly filled out, balanced, accompanied by a proof-sheet, and signed, must be delivered to said manager before 9.45 a. m. It shall be the duty of the manager to compare and examine the statements rendered, and to report, should any errors be found, to the parties making such errors before 12 m., by written notice, which must be called for at the manager's office. Parties in error must at once proceed to adjust the same and correct their statements. All balances due from members as shown by the statements shall be paid by certified check drawn to the order of the bank design-ed for that purpose, and delivered to the manager before 10.15 a. m., the same day, except on Saturdays, when the balance must be paid before 9.45 a. m.

SEC. 4. On balances due to members, as shown by the statements,

a draft for the amount, payable to their own order, shall be drawn upon the bank designated for that purpose and delivered to the manager before 10.20 a. m. (except on Saturday). The manager shall cause said draft, if correct, to be accepted by said bank, and returned to the parties entitled thereto at the manager's office.

SEC. 5. *On* or before 9.45 a. m., parties who have not borrowed or loaned their stock balances for "the account" shall extend said balances on their statements at the closing bid price, designated as short or long, and shall request the manager in writing to borrow or loan said stock balances for their account and risk at the closing bid price. Notice that such loans have been made and the names of the parties thereto will be delivered at the manager's office on or before 2 p. m. Loans made by the manager are for one day only, unless renewed between members.

SEC. 6. Stock balances as shown by the statements rendered for cash settling days must be delivered and paid for at the closing bid price of the previous day, as per manager's notices, before 1.30 p. m. Provided, however, if satisfactory evidence is shown the clearing-house committee that the cash stock is on hand in New York, or in transit for Chicago, three days' grace will be given the seller to make the delivery with interest, failing in which the clearing-house committee shall cause to be purchased for account of delinquent said stock in whichever market in their judgment seems best; and the party so failing to deliver shall be held responsible for all loss or damage arising therefrom, but when a failure to receive or deliver occurs, nothing in these notifications shall be construed to relieve the last contracting parties to the transaction from the liabilities to each other.

SEC. 7. Whenever a member fails to pay the balance due on his statement by 10.15 a. m. (except on Saturday), the manager shall notify the presiding officer of the exchange, whose duty it shall be to forthwith cause the stock balance, as shown by the statement of the delinquent, to be bought in or sold out under the rules, as the case may be, and assess the party in interest on the statement *pro rata*. In case any member owes an additional amount caused by errors, disputes or assessments, said amount shall be paid within one hour from the time of notification of the same, otherwise the party will be considered as having failed, and be treated accordingly.

SEC. 8. Whenever a member is unable to meet his contracts or transactions made for "the account," he shall make a statement of his transactions, to be audited that day, and deliver it to the manager or presiding officer of the exchange.

SEC. 9. The manager, or any assistants employed by him in the manager's office, are positively prohibited from receiving any securities or currency or any other evidences of value, except the checks and drafts hereinbefore mentioned in these rules.

SEC. 10. The same rules as to notice, time and place that govern defaults in other contracts shall apply to transactions for "the account."

SEC. 11. Neither the exchange nor any of its members (except

those making the errors), the manager or any assistants employed by him, shall be responsible for any errors made in the statements to the manager, but the errors must be settled and adjusted at once between the members making said errors when notified by the manager to do so. The manager shall report any neglect or refusal to comply with these rules to the presiding officer of the exchange.

SEC. 12. The margin to be deposited on stocks trading in clearing-house selling at $100 or over per share shall be $10 per share, and on all stocks selling under $100 per share the margin shall be $5 per share.

SEC. 13. Margins deposited on trades in the clearing-house shall be considered as a margin or as a part of same under section 1 of article XVI of the by-laws of the stock exchange. All such margins to be deposited in the clearing-house.

SEC. 14. The clearing of trades and money is not completed until the trades and substitutions are all made and notice posted to that effect by the manager of the clearing-house.

SEC. 15. The broker- have the party they may trade with or party received from the clearing-house on the substitution of the day before, in case of any failures between the hours the sheets are put in the clearing-house, 9.45 a. m., and the time the notice is posted that the substitutions are ready for that day.

SEC. 16. In the event of the announcement of the failure of any member to meet his contract, all stock bought in on or sold
41 out for him as "account" stock shall be settled outside of the clearing-house, and only such stocks as appear on the substitution sheet of the day of the failure shall be allowed to clear on the clearing-house sheet of the following morning.

SEC. 17. When any member fails to execute any contracts required of him by the clearing-house, the margin checks deposited by such member for the protection of other members contracting with him through the clearing-house, shall be held first for that special purpose, and after satisfying the claims of such members to the extent of the margin rule of the clearing-house, the balance, if any, shall be held for a period not exceeding ten days, as a trust fund for a *pro rata* distribution among other creditors, who are members of the Chicago stock exchange.

II.

That such rules and by-laws being in force, complainants, on the 16th day of July, 1896, wired their brokers, Schwartz, Dupee & Company, as follows:

"Sell 500 Diamond Match at 220½ for account;" which was done; that later on the same day, said brokers wired complainants as follows:

"Sold 500 Diamond Match at 221⅛ for the account."

That on the 20th day of July, 1896, said brokers received telegram from complainants as follows:

"Sell 200 Diamond Match at 221 for the account at opening of market."

That later on the same day, said brokers wired complainants as follows:

"Sold 200 Diamond Match 221½ for the account."

That on the 25th day of July, 1896, complainants wired said brokers, as follows:

"Change the Diamond Match over to August account at 2½ %. If you cannot do it let us know at once."

That shortly after, on the same day, complainants wired said brokers, as follows:

"You sent us the difference this morning at 2½; at what difference can you do it now?"

That later, on the same day, complainants wired said brokers as follows:

"Change the 500 at 2 cents or better."

That afterwards, and about 12 o'clock on the same day, said brokers wired complainants as follows:

"Bought Diamond Match 227 for the account; sold 500, 229 account 2d."

42 That on July 27th, complainants wired said brokers, as follows:

"Change 200 more Diamond Match 2 % or better."

Later, on the same day, said brokers wired complainant- as follows:

"We changed the 200 Match at 2¼ difference. Will give you price later."

And, shortly afterwards, on the same day, said brokers wired complainant- as follows:

"Bought 200 Match 226¾, account; sold 200 second account 229."

That these purchases on July account balanced the sales on July account and left the brokers with sales made for complainants of 700 shares of the stock of the Diamond Match Company for the August account; that on the 3d day of August the clearing department of said stock exchange sent to Schwartz, Dupee & Company, and Jamieson & Company, clearing-house sheets, as follows:

"CHICAGO STOCK EXCHANGE,
CLEARING DEPARTMENT,
CHICAGO, *August 3d*, 1896.

Schwartz, D. & Co.:

We have settled all trades on your sheet this day with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
	50	W. Ch'go.	103¾	Wilson & S.
	150	"	103¾	Wasmansdorff.
	1,150 Match.		222	Jamieson & Co.
	100 Bisc.		22	Breeze & Co.
	550 "		92	Spencer.

CHICAGO STOCK EXCHANGE,
CLEARING DEPARTMENT,
CHICAGO, *August* 3, '96.

Jamieson:

We have settled all trades on your sheet this day with the following exceptions which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
1,150	....	M.	222	Schwartz."

That the item "1,150 Match 222, Jamieson & Co.," was made up in part of the 700 shares sold by Schwartz, Dupee & Company, on August account for complainant; that this substitution of Jamieson & Company for the parties to whom such 700 shares had been originally sold was done by the clearing department of said exchange, according to its uniform custom.

43 III.

That the method of doing business on said exchange is as follows: At ten o'clock there is an official call at which the secretary and manager call all the stocks, bonds and securities on the official printed list, and as this call progresses, any member wishing to buy or sell, bids thereon, and the record is made of the transaction; after which there is an irregular call, which closes at half past one, when the manager of the clearing-house announces the clearing-house or settlement price for the day, which are the closing prices on the exchange for the respective stocks and securities; that the manager then substitutes trades and sends out cards to all buying or selling on account for the current month, or for the next month; that on the 25th of the month and thereafter until the second day before the end of the month, two calls are made, one for the current month, and one for the next ensuing month, and this is done to allow those who wish to do so to change their accounts over to the next month. That this substitution was made by the clearing department by a system somewhat similar to that employed by the clearing-house for banks, that is, that where a broker has purchased and sold during the day the same amount of the same kind of stocks or bonds, his account is balanced by the clearing department, and all margins deposited by such broker may be withdrawn; that when sales and purchases are made by different brokers, one buying and the other selling, the same kind of stock or bonds, a substitution is made by the manager of the clearing department, by which it appears that the broker selling has sold such stock, not to the person to whom it was originally sold, but to a person or persons other than those to whom such sales were originally made, and who originally bought of some one else, and that a broker purchasing stock has purchased from some broker other than the broker from whom he originally purchased the same; for instance, if A had sold 100 shares of stock to X, and B has bought the same amount of the same stock from Y, and X and Y's accounts are balanced by other transactions, the substitution would make it appear that A had sold

100 shares to B, and B had bought 100 shares from A, and the names of the parties with whom the original transactions had actually been made by A and B would not appear on the clearing-house sheet; that in the transactions on said exchange it is then customary for the parties thus substituted and brought into the relation of buyer and seller with each other by the manager, to assent to the new relations thus formed, and to confirm the transactions as thus adjusted by the manager, and to put up the margins
44 required by the rules, unless margins are already on deposit in the exchange, in which case they are transferred by the manager to the new account.

IV.

That being advised of the substitution on account, as aforesaid, said Schwartz, Dupee and Company, and said Jamieson and Company on said 3d day of August, 1896, exchanged trading cards with each other, on which appears the following:

"CHICAGO, *Aug.* 3, 1896.

M. Jamieson & Co.:

We hereby confirm sales made by us for the account today under the rules of the Chicago stock exchange, also substitution trades.

Am't.	Kind of property.	Price.
	Substitution trades—Sold.	
1,150	Match	222
	Difference { Collect	
	Pay	287 50

(Signed) SCHWARTZ, D. & CO."

"CHICAGO, *Aug.* 3, 1896.

M. Schwartz:

We hereby confirm purchases made by us for the account today, under the rules of the Chicago stock exchange, also substitution trades.

Am't.	Kind of property.	Price.
	Substitution trades—Bought.	
1,150	D. Match	222
	Difference { Collect	
	Pay	287.50

(Signed) JAMIESON & CO."

That these cards were handed by the parties receiving them to the clearing-house department, so that it appeared at the close of business on said 3d day of August, by the clearing sheet, that chwartz, Dupee & Company had sold to Jamieson & Company on account, for August, 1,150 shares of the stock of the Diamond Match

Company, 700 shares of which are the stock in controversy
45 in this case, delivery of which under rule 2 of the clearing-house was to be made on the last day of August, 1896; that Schwartz, Dupee & Company and Jamieson & Company each deposited with the said clearing-house, seven thousand dollars, as margins on said 700 shares of stock, which amount is still held by the said stock exchange, in trust.

V.

That on the 3rd day of August, 1896, the governing committee, of which defendant Jamieson was then *ex officio* president, by virtue of his being then president of said exchange, held a meeting at which the following resolution was adopted, the said defendant, Jamieson, voting in favor of its adoption.

"Resolved, That the exchange adjourn on Tuesday morning, the 4th instant, and remain closed pending further action by this committee."

That pursuant to said action, said exchange did not open on said August 4th, or thereafter, until the 5th day of November, 1896.

VI.

That on the 31st day of August, 1896, Schwartz, Dupee and Company tendered to Jamieson and Company ten certificates of the stock of the Diamond Match Company for one hundred shares each, and three like certificates for 50 shares each, making 1,150 shares of said stock, which said Jamieson & Company examined and refused to receive.

VII.

That on the 11th day of September, 1896, Schwartz, Dupee & Company, delivered to Jamieson & Company, the following letter:

"CHICAGO, *September* 9, 1896.

Messrs. Jamieson & Co., No. 187 Dearborn street, Chicago, Illinois.

DEAR SIRS: On August 31, 1896, we tendered you seven hundred (700) shares of Diamond Match stock in settlement of sales made by us. The sales made were 500 shares July 25th, and 200 shares July 27th, 1896, you being substituted through the clearing-house of the Chicago stock exchange August 3, 1896, as the purchaser of said stock.

This is to notify you that said sales were made by us as agents for Henry Clews & Co., of New York, who may rightfully
46 take any proceedings to enforce the contracts for said sales, and who are authorized to make settlement therefor.

Very truly yours, SCHWARTZ, DUPEE & CO."

That on the same day, the following letter was delivered by Mr. Davis to Jamieson & Company:

"SEPTEMBER 10, 1896.

Messrs. Jamieson & Company, # 187 Dearborn street, Chicago.

DEAR SIRS: This is to notify you that on Tuesday, the 15th day of September, 1896, at one o'clock p. m., we shall offer for sale, at public auction, to the highest bidder for cash, at the judicial sales-rooms of the Chicago real-estate board, No. 57 Dearborn street, in the city of Chicago, county of Cook and State of Illinois, seven hundred (700) shares of stock of the Diamond Match Company, and at said times and place will sell the same to the highest bidder for cash. Said sale will be made for your benefit on account of your contracts with Schwartz, Dupee & Co. on the Chicago stock exchange for the purchase by you of said shares, in which contracts the said Schwartz, Dupee & Co. were acting as agents of the undersigned; said shares of stock having been tendered you by Schwartz, Dupee & Company in fulfillment of said contracts on the 31st day of August, 1896.

You are further notified that should said stock at said sale sell for less than the amount due from you on said contracts we will look to you to settle the difference, and we will hold you responsible for any loss on account of said contracts.

The contracts of sale referred to herein are the same mentioned in the letter of Schwartz, Dupee & Company accompanying this notice.

In the meantime we hold said stock ready for delivery to you upon payment of the amount due from you under said contracts of purchase.

Very truly yours, HENRY CLEWS & CO.,
By ESTABROOK & DAVIS,
Their Att'ys."

That on the 23rd day of September, 1896, about 9.45 a. m., the following letter was delivered by Mr. Davis to Jamieson & Company:

"SEPTEMBER 22, 1896.

Messrs. Jamieson & Company, Chicago, Illinois.

DEAR SIR-: Pursuant to our notice to you dated the 10th inst., which we personally left with Mr. Billings on the 11th, we have to inform you that on the 15th day of September we adjourned
47 the auction sale of the seven hundred (700) shares of stock of the Diamond Match Company until the 22nd day of September, 1896, at one o'clock p. m.

We sent out several hundred circulars to persons interested, and to such persons as we might reasonably suppose were interested, both of the original date fixed for the sale, and of the date to which the sale was adjourned.

We today offered the stock for sale to the highest bidder, and it was struck off at the price of one hundred and thirty dollars ($130) per share. The shares offered were the same ones tendered you by Schwartz, Dupee & Company on the 31st of August, as stated in their letter of the 9th inst.

This is to further notify you that we shall hold you liable for

the difference between the price at which you purchased and the price for which the stock sold at auction, and for all damages which we have sustained by reason of your failure to accept and pay for said stock.

Very truly yours, HENRY CLEWS & CO.,
By ESTABROOK & DAVIS."

That on the 24th day of September, 1896, at 9.50 a. m., the following letters were delivered to Jamieson & Company by Mr. Davis:

"SEPTEMBER 23, 1896.

Messrs. Jamieson & Company, # 187 Dearborn street, Chicago, Illinois.

DEAR SIRS: As the Chicago stock exchange has closed and it is uncertain when it will be opened, we have to request that you consent that the Chicago stock exchange pay to us the margins deposited on account of the sale of seven hundred (700) shares of the stock of the Diamond Match Company sold by us for Henry Clews & Company and purchased by you, according to the clearing-house sheet of August 3rd.

Upon receipt of the margins from the clearing-house, the amount deposited by you, to wit: ten dollars per share, will be credited you on account of said purchase; without prejudice, of course, to the right of Henry Clews & Company to demand and recover from you any damages sustained by reason of your failure to accept and pay for said stock over and above the amount deposited by you to protect said sale.

Yours truly, SCHWARTZ, DUPEE & CO.

We concur in the above request, and upon receipt of said
48 deposit by Schwartz, Dupee & Company, Jamieson & Company will be credited with the amount of the deposit of Jamieson & Company. We shall look, however, to Jamieson & Company to settle any damages over and above the amount of said credits.

HENRY CLEWS & CO.,
By ESTABROOK & DAVIS,
Their Att'ys."

That on the said 24th day of September, Schwartz, Dupee & Company received from Jamieson & Company the following letter:

"Jamieson & Co., bankers and brokers, 187 & 189 Dearborn St.

Members New York stock exchange, Chicago stock exchange, Chicago board of trade.

CHICAGO, *Sept.* 24, 1896.

Schwartz, Dupee & Co., city.

GENTLEMEN: We have your letter of Sept. 23rd. We have noted your suggestion thereon, but as matters stand, we do not think any affirmative action is required on our part.

Yours truly, JAMIESON & CO."

That on the same day, Mr. Davis delivered to Mr. Joseph R. Wilkins, secretary of said exchange, the following letter:

"SEPTEMBER 23, 1896.

To the Chicago stock exchange and its governing committee, Chicago.

DEAR SIRS: There is on deposit in the exchange, twenty dollars ($20) per share on seven hundred (700) shares of the Diamond Match Company stock sold by us to Jamieson & Company for the August account; of this amount ten dollars ($10) per share was deposited by us, and ten dollars ($10) per share by Jamieson & Company to protect said contracts.

A tender of the stock was made by us to Jamieson & Company, at their office, on the 31st day of August, 1896, before 1.30 p. m., as required by the rules. Jamieson & Company refused to accept the stock, and we now demand a payment to us of the amount of said deposits. Our clients on the transactions were Henry Clews & Company, and this demand is made on their behalf; without prejudice to their right to recover from Jamieson & Company any damages on account of the latter's default.

49

Very truly yours, SCHWARTZ, DUPEE & CO.

We concur in the above request.

HENRY CLEWS & CO.,
By ESTABROOK & DAVIS."

That no reply was received to this letter.

That three or four days before the said 15th day of September, the following notice was sent to every broker then a member of said exchange, and to every banker in the city of Chicago, and was also inserted for three days in the "Chicago Daily Bulletin," a legal paper, and having a general circulation among bankers and brokers and lawyers in the city of Chicago.

"Estabrook & Davis, # 807 Chamber of Commerce building.

Sale of Diamond Match Stock.

Notice is hereby given that on Tuesday, the 15th day of September, 1896, at one o'clock p. m., at the judicial salesrooms of the Chicago real-estate board, No. 57 Dearborn street, in the city of Chicago, county of Cook and State of Illinois, the undersigned will offer for sale, and sell, at auction, to the highest bidder for cash, seven hundred (700) shares of the capital stock of the Diamond Match Company.

HENRY CLEWS & CO.,
By ESTABROOK & DAVIS,
Their Attorneys."

That all the daily newspapers in the city of Chicago also had notice of said sale; that on the said 15th day of September, at the appointed hour, Mr. Davis, of the said firm of Estabrook & Davis, attended at the place of sale and found present about one hundred

stock brokers, who seemed to be interested in the said sale; that thereupon Mr. Davis adjourned said sale until September 22, at 1 o'clock p. m. and made public announcement of such adjournment; that such adjournment was also noticed in all the Chicago daily papers; that on the morning of the 21st day of September, Mr. Davis mailed to all the bankers and stock brokers in Chicago the following notice:

"Estabrook & Davis, No. 907 Chamber of Commerce building.

Sale of Diamond Match Company Stock.

Notice is hereby given that the auction sale advertised for Tuesday, the 15th day of September, 1896, at one o'clock p. m., at the judicial salesrooms of the Chicago real-estate board, No. 57 Dearborn St., in the city of Chicago, county of Cook and State of Illinois, for the sale of seven hundred (700) shares of the capital stock of the Diamond Match Company, was adjourned until Tuesday, Sept. 22, 1896, at one o'clock p. m., at which time and at the same place said stock will be sold to the highest bidder for cash.

HENRY CLEWS & CO.,
By ESTABROOK & DAVIS,
Their Attorneys."

That on said 22nd day of September, Mr. Davis attended at the hour and place named, and offered for sale certificates for 700 shares of the stock of the Diamond Match Company; nearly one hundred people being there present; that bids started at less than par, were raised until Mr. Frank N. Gage, a stock broker, bid 130 per share for said 700 shares; that Mr. Barber, the president of the Diamond Match Company, bid $135 per share for 200 shares thereof; that Mr. Davis refused to accept a bid for less than the entire 700 shares, unless there was also a bid for the residue of said stock so that the total amount of the bids for separate lots would aggregate more than the bid of $130 per share for the 700 shares; that no other bids were received for the whole amount of stock; that after repeated warnings that the stock would be struck off and sold to Mr. Gage at the bid of $130 per share, unless there were other bidders, it was declared sold to Mr. Gage at $130 per share, and an order was given by Mr. Davis on Schwartz, Dupee & Company to deliver the stock to Mr. Gage upon payment of the amount bid.

IX.

That it is admitted of record by counsel for complainants that at the time complainants gave the several orders to Schwartz, Dupee & Company to sell on the Chicago stock exchange the various amounts of Diamond Match Company stock, and at the time said Schwartz, Dupee & Company executed said orders, said Schwartz, Dupee & Company did not have in their hands any stock of said Diamond Match Company which was the property of the complainants, nor did said Schwartz, Dupee & Company at any time there-

after have in their hands any of the stock of said Diamond Match Company, which was the property of complainants.

It is admitted by the complainants that the 1,150 shares of the capital stock of the Diamond Match Company tendered to Jamieson & Company, by Schwartz, Dupee & Company, on August 31, 1896, were not the property of the complainants nor any part thereof

51 It is further admitted that the 700 shares of said stock alleged in the bill of complaint to have been sold on the 22nd day of September, 1896, were not delivered to Frank N. Gage, but immediately after said sale said shares of stock were delivered to Major J. W. Conley, one of the firm of Schwartz, Dupee & Company, by H. J. Davis, who conducted said sale on behalf of Henry Clews & Company, for safe keeping by the said J. W. Conley; that afterwards, and on the same day, said H. J. Davis delivered to said Frank N. Gage a memorandum in words as follows:

"SEPTEMBER 22, 1896.

Sold to Frank N. Gage 700 shares of Diamond Match stock numbered A 680–686, inclusive, at $130 per share.

HENRY CLEWS & CO.,
Per ESTABROOK & DAVIS."

That thereupon said Gage wrote below said memorandum the following:

"CHICAGO, *September* 22, 1896. O K.

Please deliver above to I. H. Waggoner, Esq., and accept his check in settlement.

FRANK N. GAGE."

And thereupon said Gage redelivered said memorandum and said order to said H. J. Davis, who thereupon delivered the same to Mr. I. H. Waggoner, together with an order on Schwartz, Dupee & Company to deliver said certificate of shares to said Waggoner, upon being paid the amount of $130 per share. That said Gage was employed by said Waggoner to bid at said sale, and that said Waggoner was acting for and on behalf of the complainant in this suit in the employment of said Gage.

X.

That when the stock exchange reopened on the 5th day of November, 1896, Diamond Match stock was sold for cash at 130 and 130½; and that the settlement price for said stock on that day was 129; and that the settlement prices of said stock from November 5 to December 10, 1896, were as follows:

52

1896.

Nov.	5.	Settlement price	129
	6.	"	133¼
	7.	"	138
	9.	"	144
	10.	"	142½
	11.	"	137½
	12.	"	135
	13.	"	137
	14.	"	135½
	16.	"	131
	17.	"	130½
	18.	"	127½
	19.	"	127½
	20.	"	125½
	21.	"	125½
	23.	"	127½
	24.	"	131½
	25.	"	129½
	27.	"	130
	28.	"	129
	30.	"	129
Dec.	1.	"	130
	2.	"	127½
	3.	"	126½
	4.	"	123½
	5.	"	123
	7.	"	121
	8.	"	121½
	9.	"	119½
	10.	"	120

That the lowest price at which said stock has sold since November 5, 1896, was on December 21, 1896, when the price was 108½, and the highest price was on September 17, 1897, when the price was 161½.

XI.

That Jamieson & Company have settled with Schwartz, Dupee & Company for 450 shares of the 1,150 shares referred to in the clearing-house sheet of August 3, 1897; that such settlement, however, does not include the 700 shares in question in this case.

53

XII.

That it is admitted by counsel for complainant that the $7,000 put up by Schwartz, Dupee & Company was charged by them to the complainants, and that any claim to that fund which they had has been transferred to complainants; that Schwartz, Dupee & Company have no claim whatever of any kind or character against the $14,000 deposited with said exchange, $7,000 of which was contrib-

uted by Schwartz, Dupee & Company and $7,000 by Jamieson & Company as margins deposited by the parties respectively for said 700 shares of Diamond Match stock.

And from the foregoing facts, the master finds as a matter of law:

I.

That inasmuch as the question whether the complainants may invoke the aid of a court of equity in this cause was raised by demurrer to the bill, and was argued by counsel and considered by the court before the order of reference herein, the master does not think it necessary or proper to decide the question of jurisdiction.

II.

That while the contention of defendants' counsel that the constitution, by-laws and rules of the Chicago stock exchange, are a cunningly devised scheme to enable its members to carry on gambling in stocks and bonds in a systematic manner finds some color in the peculiar methods therein provided for trading and substitution of trades and manipulations of margins; and while gambling transactions may easily be carried on thereunder by disregarding the article forbidding fictitious transactions, yet, as there is no evidence in this case showing, or tending to show, that either of the parties to the original trades or to the substituted contracts did not intend to deliver and receive the stock of the Diamond Match Company so sold and bought, this transaction cannot, under the evidence in this case, be held to be a gambling transaction.

III.

That by the substitution made in this case, pursuant to the rules of the clearing department, which all the members of the exchange assented to and agreed to be governed by, and by which all persons directing sales or purchases to be made on said exchange by such brokers are bound, Schwartz, Dupee & Company on the 3d day of August, 1896, sold to Jamieson & Company and Jamieson &
54 Company bought from Schwartz, Dupee & Company 1,150 shares of the stock of the Diamond Match Company at $222 per share, said stock to be delivered and received on the 31st day of August, 1896, and such contract of sale and purchase was duly ratified by the respective parties on that day, and was thenceforth binding upon both parties to the contract.

IV.

That the remedy provided by the by-laws of said exchange for a violation of contract made on the exchange by members thereof is not exclusive and does not oust the court from entertaining jurisdiction of suits to recover damages for a breach of contract made under the constitution, by laws and rules of said exchange; that even were such remedy exclusive when the exchange held daily sessions, as provided for in its constitution, by-laws and rules, it

ceased to be exclusive in this case by reason of the closing of said exchange on said 3d day of August, 1896, and its remaining closed until long after the maturity of said contract, and until the 5th day of November, 1896.

V.

That when substitution of said contract for the sale and purchase of said stock was made on said 3d day of August, 1896, whereby said Schwartz, Dupee & Company sold and said Jamieson & Company bought 1,150 shares of said stock on the terms aforesaid, there was no legal obligation remaining on the part of the original parties to whom said 700 shares of stock were sold to receive the same from Schwartz, Dupee & Company, or on Schwartz, Dupee & Company to deliver said stock to them; that thenceforth there was a valid and binding contract between Schwartz, Dupee & Company and Jamieson & Company for the sale and purchase of said stock on the terms aforesaid, for the violation of which by either party the other party had its right of action.

VI.

That when said Schwartz, Dupee & Company on the 31st day of August, 1896, tendered to Jamieson & Company certificates for 1,150 shares of stock of said Diamond Match Company, which said Jamieson & Company refused to receive, a right of action accrued to Schwartz, Dupee & Company against Jamieson & Company to recover such damages as they had suffered by reason of the refusal of said Jamieson & Company to accept and receive said stock and to pay therefor the price agreed upon in said contract.

55 VII.

That said complainants, having been the principals for whom said Schwartz, Dupee & Company, as brokers, had sold 700 shares of said stock, which afterwards formed a part of the 1,150 shares which on the 3d day of August, by substitution and the ratification of both parties substituted said Schwartz, Dupee & Company sold and said Jamieson & Company purchased for $222 per share, to be delivered and received on the 31st day of August, 1896, said complainants, as such principals, were entitled to maintain an action against said Jamieson & Company for the damages sustained by complainants because of the refusal of said Jamieson & Company to receive said stock when so as aforesaid tendered to them, by Schwartz, Dupee & Company.

VIII.

That it is strenuously contended by counsel for defendants that the sale of 700 shares of stock of the Diamond Match Company on the 22d day of September, 1896, to Frank N. Gage for $130 per share was a mere pretense and a fraud by reason of the fact that said complainants did not own said stock so sold, but borrowed the same from Schwartz, Dupee & Company; that said stock was not

delivered to said Gage, and was not paid for by him, but was immediately after such sale delivered back to Schwartz, Dupee & Company by Mr. Davis, who conducted said sale on behalf of complainants, and that said Gage was employed to bid at said sale by one Waggener, who was acting for and on behalf of the complainants in such employment of said Gage; and that such transaction was not a legal sale and purchase of said stock, but only a colorable and pretended sale and purchase, and does not, therefore, establish, nor tend to establish, the market price of said stock at the time of such sale; that such sale was also irregular and void in this; that when Mr. Barber, the president of the Diamond Match Company bid $135 per share for 200 shares thereof, Mr. Davis, who was making the sale, refused to accept a bid for said 200 shares, unless there was also a bid for the residue of the stock, so that the total amount of the separate bids would aggregate more than the bid of Mr. Gage of $130 per share for the entire 700 shares; and that, therefore, complainants are entitled in any event to recover only nominal damages; yet, inasmuch as said sale was duly advertised by notice mailed to all of the bankers, and all members of said stock exchange in Chicago, and was mentioned in the daily papers of
56 Chicago, and was attended by nearly one hundred persons; that when said stock was offered for sale, bids were started at about the par value thereof and were raised from time to time until Mr. Gage bid $130 per share for the 700 shares; and inasmuch, also, as the then president of the Diamond Match Company was present at such sale and made a bid for 200 shares of said stock—$135 per share—which bid was not entertained because no bid was made for the residue thereof, sufficient to make the several bids aggregate more than the bid of $130 per share for the entire amount; and inasmuch, also, as when the exchange opened on the 5th day of November, 1896, the settlement price of that day was $129 per share, and inasmuch as there is no evidence tending to show that any of the bidders, actual or possible, had any knowledge or information that complainants were not the *bona fide* owners of said stock, nor any evidence tending to show that any bid other than Gage's was not *bona fide* and made with the expectation of receiving and paying for the stock; and since there is nothing in the evidence tending to show that the stock would not have been delivered to any purchaser other than Mr. Gage if he has so desired, or that the bids made were in any way affected by reason of the ownership or non-delivery of said stock, and inasmuch as Gage made the highest bid for the whole stock, and therefore by his bid fixed the market value of the stock higher than it would have been, had it been sold to any bidder for the whole stock other than Gage, and as the only purpose of said sale was to fix the market value of said stock on the 22d day of September, 1896, the master is of the opinion that the result of said sale, as the same was conducted, taken in connection with the market value thereof as established by the said exchange on the day of its reopening, on said 5th day of November, 1896, is *prima facie* evidence tending to show the market value of said stock; and that in the absence of any other

evidence as to such value, the sum so bid for the entire 700 shares—$130 per share—should be considered for the purpose of this suit, as the market value of said stock on the day of such sale; and that the complainants are entitled to a decree adjudging that the defendants, constituting said governing committee of said Chicago stock exchange, pay to complainants said sum of fourteen thousand dollars, so as aforesaid held in trust by them; and that upon the payment thereof, they be discharged from all obligations of their said trust; and further adjudging that seven thousand dollars thereof be applied in liquidation *pro tanto* of the sum hereinbefore found to be due to complainants from said defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, constituting the firm of Jamieson & Company, to wit: sixty-four thousand
57 four hundred dollars; and that said last-named defendants pay to the complainants the residue of said sum of $64,400, to wit: the sum of fifty seven thousand four hundred dollars, together with interest thereon at the rate of five per cent. per annum from the 31st day of August, A. D. 1896.

Respectfully submitted.

E. B. SHERMAN,
Master in Chancery United States Circuit Court,
Northern District of Illinois, Northern Division.

Chicago, January 12, 1898.

Master's fees, $500, paid by complainant-.

(Endorsed:) Filed Jan. 22, 1898. S. W. Burnham, clerk.

Objections to Master's Report. Filed Jan'y 22, 1898.

Objections to master's report.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

Objections made by the defendants Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings to the report of Master in Chancery E. B. Sherman, to whom the above-entitled cause was referred to take evidence and report the same, together with his findings of fact and law.

The defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, object to the report of Master in Chancery E. B. Sherman herein, and assign the following grounds for objection:

1. Said master has found in part two of his report on the facts in this case "that the item '1,150 match 222, Jamieson & Co.' was made up in part of the 700 shares sold by Schwartz, Dupee & Co. on August account for complainant-. That this substitution of Jamieson & Co. for the parties to whom such 700 shares had been originally sold was done by the clearing department of said exchange,

according to its uniform custom." Whereas, in the undisputed evidence presented before the master, and as recited by him in his report, there is absolutely no evidence to sustain a finding
58 that said 700 shares of stock, alleged to have been sold by Schwartz, Dupee & Co. for the account of complainants, was a part of or in any way connected with the item of 150 shares of stock above referred to, or that there was any stock whatever sold by complainants to the defendants, Jamieson & Co.

2. The master has found in part four of his findings on the facts in this case, that "it appeared on the close of business on the third day of August, by the clearing sheet, that Schwartz, Dupee & Company had sold to Jamieson & Company on account for August, 150 shares of the stock of the Diamond Match Company, 700 shares of which are the stock in controversy in this case." Whereas, in the evidence as recited by the master in his report, there is no evidence whatever to show that the said 700 shares of stock were a part of or were in any way whatever connected with said 1,150 shares of stock, or that Schwartz, Dupee & Company, on their account, have sold to the defendants, Jamieson & Company, any shares of said stock, or that there were any transactions whatever between said complainants and said Jamieson & Company with reference to said stock.

3. Each of the propositions of law in this case as announced by the master in his report is erroneous, and the master should have recommended that the bill of complaint herein be dismissed for want of equity.

TENNEY, McCONNELL, COFFEEN & HARDING,
Solicitors for Defendants Jamieson & Co.

The foregoing objections are overruled.
E. B. SHERMAN, *Master.*

(Endorsed:) Filed Jan. 22, 1898. S. W. Burnham, clerk.

Exceptions to Master's Report. Filed Feb'y 7, 1898.

Exceptions to master's report.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL.

Exceptions taken by the defendants Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings to the report of Master in Chancery E. B. Sherman, to whom the above-entitled cause was referred to take evidence and report the same, together with his findings of fact and law.

The defendants, Malcolm M. Jamieson, Roland C. Nicker-
59 son and Harry F. Billings, except to the report of Master in Chancery E. B. Sherman herein, and assign the following grounds of objection:

1. Said master has found in part two of his report on the facts in the case "that the item '1,150 Match 222 Jamieson & Co.' was made up in part of the 700 shares sold by Schwartz, Dupee & Company on August account for complainant-. That this substitution of Jamieson & Company for the parties to whom such 700 shares had been originally sold, was done by the clearing department of said exchange, according to its uniform custom." Whereas, in the undisputed evidence as presented before the master, and as recited by him in his report, there is absolutely no evidence to sustain a finding that said 700 shares of stock, alleged to have been sold by Schwartz, Dupee & Company for the account of complainants, was a part of or in any way connected with the item of 1,150 shares of stock above referred to, or that there was any stock whatever sold by complainants to defendants, Jamieson & Co.

2. The master has found in part four of his findings on the facts in this case, that "it appears on the close of business on the third day of August, by the clearing sheet, that Schwartz, Dupee & Company had sold to Jamieson & Company on account for August, 1,150 shares of stock of the Diamond Match Company, 700 shares of which are the stock in controversy in this case." Whereas, in the evidence as recited by the master in his report, there is no evidence whatever to show that the said 700 shares of stock were a part of or were in any way whatever connected with said 1,150 shares of stock, or that Schwartz, Dupee & Company on their account, have sold to the defendants, Jamieson & Company any shares of said stock, or that there were any transactions whatever between said complainants and said Jamieson & Company, with reference to said stock.

3. Each of the propositions of law in this case, as announced by the master in his report, is erroneous, and the master should have recommended that the bill of complaint herein be dismissed for want of equity.

TENNEY, McCONNELL, COFFEEN & HARDING,
Solicitors for Defendants Jamieson & Co.

(Endorsed:) Filed Feb. 7, 1898. S. W. Burnham, clerk.

60 Afterwards, to wit, on the twenty-fifth day of April, 1898, there was filed in the clerk's office of said court a certain stipulation, which said stipulation is in the words and figures following, to wit:

Stipulation. Filed April 28, 1898.

Stipulation.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

It is hereby stipulated that the complainants may file instanter an amended bill, that the defendants Jamieson & Company, may file

an answer to said amended bill instanter, that the answer of the other defendants to the original bill shall stand as the answer to the amended bill, and that the replications heretofore filed shall stand as replications to all the answers.

It is further stipulated that the parties may file instanter a stipulation admitting certain facts, and that this case shall now stand for final hearing upon the pleadings as so amended, the testimony taken before E. B. Sherman, master in chancery herein, the report of said master and the stipulation of the facts above referred to.

LOWDEN, ESTABROOK & DAVIS,
Solicitors for Complainants.
TENNEY, McCONNELL, COFFEEN & HARDING,
Solicitors for Defendants Jamieson, Nickerson, and Billings.
CHESTER M. DAWES,
Solicitor for Defendants Described in said Bill as Governing Committee, Chicago Stock Exchange.
SCHWARTZ, DUPEE & COMPANY.

(Endorsed:) Filed Apr. 25, 1898. S. W. Burnham, clerk.

61 On the same day, to wit: the twenty-fifth day of April, 1898, in the December term of said court, 1897, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Order: Leave to File Amended Bill, etc.

Order of April 25, 1898.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

Upon the stipulation of the parties hereto, it is hereby ordered that the complainants may file instanter an amended bill, that the defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings may file an answer thereto instanter; that the answers of the other defendants now on file to the original bill shall stand as answers to the amended bill, and that the replications heretofore filed shall stand as replications to all the answers.

It is further ordered that the parties may file instanter a stipulation admitting certain facts and that this cause shall now stand for final hearing upon the pleadings as so amended and herein recited, the testimony taken before E. B. Sherman, master in chancery herein, and the report of said master and the stipulation of facts filed herein.

And on the same day, to wit: the twenty-fifth day of April, 1898, came the complainants in said entitled cause by their solicitors and by leave of court first had and obtained file in the clerk's office of said court their amended bill, which said amended bill is in the words and figures following, to wit:

Amended Bill. Filed April 25, 1898.

Amended bill.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

To the honorable the judges of the circuit court of the United States within and for the northern district of Illinois, northern division:

Henry Clews, Charles M. Foster and James B. Clews of the
62 city of New York and citizens of the State of New York bring this their amended bill against Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cohn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, of the city of Chicago and citizens of the State of Illinois, and George A. McClellan of Kenilworth, Illinois, and a citizen of the State of Illinois, and A. L. Dewar of Glencoe, Illinois, and a citizen of the State of Illinois, whose names your orators are unable to more fully set forth; Gustavus A. Schwartz, John Dupee, John W. Conley and Isaac J. Bloom of Chicago, Illinois, and citizens of the State of Illinois.

And thereupon your orators complain and say that they are residents and citizens of the State of New York and that all said defendants are citizens of the State of Illinois residing in the northern district thereof, and that this is a suit of a civil nature in which there is a controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000).

And further complaining your orators say that they are a copartnership doing business in the city of New York, buying and selling stocks, bonds and other securities under the name of Henry Clews & Company; that the defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, constitute a copartnership under the name of Jamieson & Company, conducting the business of buying, selling and exchanging bonds, stocks and other securities, and also a general brokerage business for the purchase and sale of like properties; that in the city of Chicago several years ago there was organized a voluntary association of stock brokers and persons engaged in the business of buying and selling stocks, bonds and securities, which association adopted the name of the Chicago stock exchange, and adopted a constitution and by-laws for the government of said association. Said association was formed for the purpose of opening an exchange where its members could

meet together to buy and sell such stocks and securities as should be listed with said exchange, and where its members could make contracts for said sales and purchases under the rules and customs of said exchange. Under the constitution and by-laws of said association the whole government of the exchange was vested in a governing committee composed of the president of the exchange
63 and twenty-four (24) members; and your orators show that during the month of July, 1896, and since, up to the time of the filing of the original bill, the governing committee duly elected and acting as such were, the defendants, Malcolm M. Jamieson, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, and A. L. Dewar.

And further complaining your orators show unto your honors that in the month of July, 1896, they directed their brokers in Chicago, Messrs. Schwartz, Dupee & Company, being composed of Gustavus A. Schwartz, John Dupee, John W. Conley and Isaac J. Bloom, to sell on account of your orators at the rooms of the Chicago stock exchange and in accordance with its rules and customs, seven hundred (700) shares of the capital stock of the Diamond Match Company, a corporation, which stock has been duly listed as one of the stocks which might be sold and purchased in said exchange; and your orators directed said Schwartz, Dupee & Company to sell said shares for delivery on the 31st day of August, 1896. On August 3, 1896, said Schwartz, Dupee & Company sold on said exchange to defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings eleven hundred and fifty (1,150) shares of the capital stock of the Diamond Match Company, and agreed and contracted to deliver the same to the said Jamieson & Company, or to such persons as might become the assigns of said contract under the rules of said exchange on the 31st day of August, 1896, and the said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings agreed to accept and receive said stock from said Schwartz, Dupee & Company on the 31st day of August, 1896, at the agreed price of two hundred and twenty-two dollars ($222.00) per share for each and every share of said stock.

And your orators show that said sales were made by the said Schwartz, Dupee & Company in their names, but therein as to seven hundred (700) of said shares included in said eleven hundred and fifty (1,150) shares they were acting for and in behalf of your orators, as your orators' agents or brokers, and as to the remaining four hundred and fifty (450) shares the said Schwartz, Dupee & Company were acting on behalf of other clients than the complainants.

And your orators further show that on the third day of August,
64 1896, the manager of the clearing-house of said exchange being thereto by the rules and by-laws of said exchange duly authorized delivered to said Schwartz, Dupee & Company a

statement showing a sale by said Schwartz, Dupee & Company to the said Jamieson & Company of said eleven hundred and fifty (1,150) shares of stock, and said manager also delivered to said Jamieson & Company a statement showing a purchase by said Jamieson & Company from said Schwartz, Dupee & Company of said stock.

And your orators further show that on the 31st day of August, 1896, and during the business hours provided by the rules, by-laws and customs of said exchange, the said Schwartz, Dupee & Company tendered to the defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings certificates for eleven hundred and fifty (1,150) shares of the Diamond Match Company, duly issued by it, and duly endorsed and transferred so as to vest in the said defendants the title thereto upon delivery thereof and the said Schwartz, Dupee & Company then and there offered to carry out said contract of sale and offered to deliver said shares of stock to the said defendants, but the said defendants refused to accept the same, and refused to carry out their said contract of purchase, and refused to pay the said Schwartz, Dupee & Company for said stock.

And your orators further show that upon said refusal of said defendants to carry out their contract the said Schwartz, Dupee & Company informed your orators of said refusal, and on the 11th day of September, 1896, said Schwartz, Dupee & Company, in writing, notified said defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, that said sale as to seven hundred (700) shares of said stock was made by the said Schwartz, Dupee & Company as agents for and on behalf of your orators, and notified said defendants that your orators might rightfully take any proceedings to enforce said contracts of sale, and to make settlement of said transaction as to the said seven hundred (700) shares. And thereupon upon the same day your orators notified the said defendants that your orators would proceed to sell said seven hundred (700) shares of stock at public auction to the highest bidder for cash; and that your orators would look to said defendants to pay and settle any difference and any loss or damage accruing to your orators if said stock should sell for less than the price which the said defendants had agreed to pay therefor. And your orators also notified said defendants that in the meantime they held said stock ready for delivery to said defendants upon payment of the amount due on said contract of sale as to said seven hundred (700) shares. But the said defendants utterly refused to pay for and receive said stock, and thereupon your orators proceeded to advertise said stock for sale at public auction.

65 And thereupon your orators did, on the 22d day of September, 1896, offer the same for sale, at public auction, and the same was struck off to the highest bidder for the sum of one hundred and thirty dollars ($130) per share.

And your orators show that they made every reasonable effort by advertisement and by bringing notice of said sale before the public, and before brokers and bankers generally in Chicago and vicinity, to induce persons to bid at said sale, but that your orators were un-

able to obtain a greater sum for said stock than one hundred and thirty dollars ($130.00) per share.

And your orators further show unto your honors that on the 31st day of August, 1896, the said shares of stock were worth in the market not to exceed one hundred and thirty dollars ($130) per share, and that your orators have suffered damages to the amount of sixty-four thousand four hundred dollars ($64,400.00) by reason of the failure of said defendants to accept and pay for said stock, and that the expense of selling the same at auction was the sum of forty-six dollars and seventy-five cents ($46.75).

And your orators further show that on the 23d day of September, 1896, they notified said defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings of said sale and of the amount bid for said stock, and that your orators should hold the said defendants liable for the difference between the price agreed to be paid by said defendants for said stock, and the price bid at said auction, and for all other damages which your orators had sustained by reason of their failure to accept and pay for said stock.

And your orators further show that at the time said contract for the sale of said stock was made upon the stock exchange the said Schwartz, Dupee & Company, as provided by the rules of the stock exchange, deposited with the clearing-house of said stock exchange the sum of eleven thousand five hundred dollars ($11,500.00) being ten dollars ($10.00) per share on the stock sold as aforesaid, in trust as security for the faithful performance on their part and on the part of the clients for whom they were acting of said contract of sale, and at the same time the said defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings also deposited with the clearing-house of said stock exchange the sum of eleven thousand five hundred dollars ($11,500.00), being ten dollars ($10.00) per share, in trust to secure the faithful performance on the part of said defendants of their contract to purchase said stock and to pay for the same; and the manager of said clearing-house, under the rules and by-laws of said stock exchange, received said sums and the same were, at the time
66 the original bill was filed herein, in the control and possession of the governing committee of said stock exchange, to wit: the defendants, Malcolm M. Jamieson, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan and A. L. Dewar.

And your orators further show that on the 24th day of September, 1896, the said Schwartz, Dupee & Company requested the said Jamieson & Company to consent that the Chicago stock exchange pay to the said Schwartz, Dupee & Company seven thousand dollars ($7,000) of the amounts so deposited to secure the performance of said contract, and offered to credit the said Jamieson & Company with said amount deposited by them, to wit: seven thousand dollars ($7,000) on the damages sustained by reason of the default of said

Jamieson & Company. And your orators, in writing, joined in said request and offered upon receipt of said amount by Schwartz, Dupee & Company to credit the said Jamieson & Company with the amount thereof.

And your orators further show that on the 24th day of September, 1896, the said Schwartz, Dupee & Company notified the defendants above named the governing committee of the Chicago stock exchange that said contract of sale as to seven hundred (700) shares was made by them on behalf of your orators, and demanded of said Chicago stock exchange and its governing committee the payment to them of the amount of said deposits on account of seven hundred (700) shares, to wit: ten dollars ($10.00) per share deposited by Schwartz, Dupee & Company, and ten dollars ($10.00) per share deposited by Jamieson & Company. And your orators in writing concurred in said request.

And your orators well hoped that no dispute would have arisen touching the said purchase of said stock or the payment therefor, according to said contract, or the payment to your orators of their loss and damage sustained by reason of the default of said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, or touching the right of your orators to receive the moneys deposited in the clearing-house of the said the Chicago stock exchange in trust as security for the faithful performance by the said defendants of their contract, but that the said defendants Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings would comply with the reasonable request of your orators to consent that the said money should be paid to your orators, and that said other defendants would
67 comply with your orators' reasonable request to pay said money to your orators, as in conscience and equity said defendants ought to do.

But now so it is may it please your honors, that the said defendants combining and confederating among themselves and with divers other persons, at present unknown to your orators whose names when discovered they pray — may be at liberty to insert herein with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orators in the premises, they, the said defendants, absolutely refuse to comply with such requests, and they, the said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, at times pretend that they never made any contract either for themselves or for your orators, and they at other times pretend that said Schwartz, Dupee & Company never offered to deliver said shares of stock either for themselves or for your orators, and they at other times pretend that your orators have suffered no loss by reason of their failure to perform said contract; whereas, your orators charge the contrary thereof to be the truth. All of which acts, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orators in the premises. In consideration whereof, and forasmuch as your orators are entirely remediless in the premises according to the strict rules of the com-

mon law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.

To the end therefore that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, according to the utmost and best of their respective remembrance, knowledge, information, and belief full, true, direct, and perfect answer make to all and singular the premises, but not under oath, oath to said answers being hereby expressly waived. And that the said defendants may come to a fair and just account of all the losses and damages sustained by your orators by reason of the failure of said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings to accept and pay for said stock; and that the defendants may come to a fair and just account of the amounts deposited in the said the Chicago stock exchange, as security for the performance of said contract; and that the said Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings may be decreed to pay to your orators the amount of said damages; and that said other defendants may be decreed to pay and deliver to your orators said trust fund, and that your orators may be further and otherwise relieved in the premises according to equity and good conscience.

May it please your honors to grant unto your orators the
68 most gracious writ of subpœna of the United States of America to be directed to the said Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin C. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, Henry C. Hackney, H. Herbst, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley, Isaac J. Bloom and the rest of the confederates, when discovered, thereby commanding them and every of them, at a day certain, under a certain pain therein to be inserted, personally to be and appear before your honors in this honorable court, then and there to answer all and singular the premises and to stand to, perform and abide such order and decree therein as to your honors shall seem meet, and your orators shall ever pray.

LOWDEN, ESTABROOK & DAVIS,
Solicitors for Complainants.

HERBERT J. DAVIS, *Of Counsel.*
FRANK O. LOWDEN, *Of Counsel.*

(Endorsed:) Filed Apr. 25, 1898. S. W. Burnham, clerk.

On the same day, to wit, the twenty-fifth day of April, 1898, came Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, by their solicitors, and filed in the clerk's office of said court their answer to the amended bill of complaint, which said answer is in words and figures following, to wit:

Answer of Jamieson et al. to Amended Bill. Filed April 25, 1898.

Answer.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL.

The separate answer of Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings, defendants, to the amended bill of complaint of Henry Clews, Charles M. Foster, and James B. Clews.

69 These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties or other imperfections in the said bill contained, for answer thereunto, or to so much or such parts thereof as these defendants are advised it is or are material or necessary for them to make answer unto, answering say:

These defendants admit that in the month of July, 1896, they constituted a copartnership under the name of Jamieson and Company, and were conducting a business of buying, selling and exchanging bonds, stocks and other securities, and also a general brokerage business for the purchase and sale of like properties. But they say that in the month of July, 1896, they bought and sold neither bonds, stocks nor securities for themselves, and that the firm of Schwartz, Dupee & Company, mentioned in said bill as the agents of the complainants, were so informed and well knew. They admit that there was in existence in July, 1896, in the city of Chicago, a voluntary association of stock brokers known as the Chicago stock exchange, and that such association had adopted a constitution and by-laws for the government of said association, and that said association was formed for the purpose of opening an exchange, where its members could meet together to buy and sell such stocks and securities as should be listed with said exchange.

Further answering, they admit that the whole government of the said stock exchange was vested in a governing committee, as set out in the said bill of complaint.

Further answering, these defendants say that they have no personal knowledge of the transactions between the complainants and Schwartz, Dupee & Company, referred to in the bill, but upon information and belief they charge that all of the orders which the complainants gave to Schwartz, Dupee and Company, for the sale by said Schwartz, Dupee and Company of Diamond Match stock on behalf of the complainants, during the month of July, 1896, were filed by Schwartz, Dupee and Company before August 1, 1896, by said Schwartz, Dupee and Company making contracts for such sale and delivery on the stock exchange; but they deny that any of said orders were filled by selling, or making contracts for the sale of said stock to these defendants, and deny that they were parties to any of

the contracts which Schwartz, Dupee and Company made, either in their own names, or on behalf of said complainants, in executing the orders referred to in the bill.

Further answering, these defendants deny that on August 3, 1896, Schwartz, Dupee and Company sold on the exchange to these defendants 1,150 shares of the stock of the Diamond Match
70 Company, for delivery on August 31, 1896, as in said bill alleged, or that these defendants agreed to accept and receive said stock; and these defendants deny that they did, on August 3, 1896, make any purchase from Schwartz, Dupee and Company, as agents or brokers for the complainants, of stock of the Diamond Match Company. But they admit that on or about August 3, 1896, the manager of the clearing-house of said stock exchange delivered to them a memorandum, stating that he has settled all of their trades on the stock exchange of that day, by substituting them as purchasers from Schwartz, Dupee and Company of 1,150 shares of Diamond Match stock. These defendants say, however, that this substitution, if it had any effect at all, which they do not admit, did not substitute these defendants as purchasers in any contract of sale which Schwartz, Dupee and Company had made, either on August 3, 1896, or prior thereto, as brokers or agents of the complainants, nor did it in any manner change or affect the contracts which Schwartz, Dupee and Company had theretofore made on behalf of the complainants, for the sale of Diamond Match stock; but, on the contrary, said substitution was a mere attempt at a settlement of differences of all of the sales in Diamond Match stock made on that day by the different members of stock exchange, including Schwartz, Dupee and Company and these defendants, for the convenience of adjusting transactions between the brokers themselves, but without affecting in any way the rights or liabilities of the principals whom said brokers respectively represented, and for whom they had made such purchases and sales. And that the sales of Diamond Match stock which Schwartz, Dupee and Company made on August 1, 1896, and which were made the basis of the substitution above referred to, were not—except to the extent of 50 shares—sales which they made to these defendants at all, nor were they sales which were made by Schwartz, Dupee and Company on behalf of the complainants; but, on the contrary, the orders which the complainants had theretofore given Schwartz, Dupee and Company for the sale of Diamond Match stock had been, prior to that date, filed by Schwartz, Dupee and Company, by making sales to other parties than these defendants, and at a different price than that stated by the manager of the clearing-house, in the substitution above referred to.

These defendants, further answering, say that they admit that on the 31st day of August, 1896, the said Schwartz, Dupee and Company tendered to these defendants certificates for 1,150 shares of stock of the said Diamond Match Company, but whether they were duly issued by the said Diamond Match Company, or whether they were endorsed and transferred so as to vest—if accepted—in
71 the said defendants the title thereto upon the delivery thereof, these defendants do not know. They do admit, however, the

tender of said 1,150 shares of stock, and their refusal to accept and pay for the same.

Further answering, these defendants say they do not know whether the said Schwartz, Dupee and Company informed the complainants of said refusal, or not; but they admit that on the 11th day of September, 1896, Schwartz, Dupee and Company, in writing, notified these defendants that said sale was made by the said Schwartz, Dupee and Company, as agents for and on behalf of the complainants, and notified these defendants that the complainants might rightfully take proceedings to enforce said contract of sale, and to make settlement of said transaction, and that upon the same day the complainants notified these defendants that they would proceed to sell said shares of stock at public auction, to the highest bidder for cash, and that the complainants would look to these defendants to pay and settle any difference, and any loss or damage accruing to the complainants, if said stock should sell for less than the price which the said complainants pretended, and still pretend, that the defendants had agreed to pay therefor.

And these defendants, further answering, say that they informed Schwartz, Dupee and Company, upon the 31st day of August, 1896, and said complainants upon the 11th day of September, 1896, that any contracts which they had made with said Schwartz, Dupee and Company, at any time in the month of July, 1896, had been made for and on account of W. H. and J. H. Moore.

Further answering, these defendants say, with reference to the pretended sale of said 700 shares of Diamond Match Company stock, on September 22, 1896, referred to in the bill, that no sale was in fact made by said complainants, as alleged in the bill, and that the complainants did not then have or own said stock, but that the sale which they pretended to make, and which is referred to in the bill, was a mere colorable and fictitious one, to carry out which they borrowed from Schwartz, Dupee and Company, or some one else, certain certificates of stock in the Diamond Match Company, which were loaned to them merely for the purpose of using at such fictitious sale; that they had arranged beforehand to have said stock bid in by some one who should appear to be a purchaser thereof, but who was in fact acting on their behalf; that the sale which is referred to in the bill was made to this man; that no delivery was made of the stock to him, nor was any money paid by him for the stock, nor any change made in the situation of any of the parties to said sale, either by transfer of the certificates which were used for that purpose, or by the payment of any money, or otherwise. And these defendants further say, that at said sale there was present a
72 *bona fide* bidder, who offered to pay for 500 shares of said stock one hundred thirty-five dollars ($135) a share, but that said complainants refused to sell said stock to him, and carried out their plan of making a fictitious sale thereof at a lower price, to their agent, at one hundred thirty dollars ($130) per share.

And these defendants, further answering, deny that said complainants have suffered damages to the extent of sixty-four thousand four hundred dollars ($64,400), as claimed in said bill, or that they

have suffered any damage, by reason of the failure or refusal of these defendants to accept and pay for said stock.

Further answering, these defendants admit that on the 23d day of September, 1896, the complainants notified them of said sale and of the amount bid for said stock, and that the complainants proposed to hold these defendants liable for the difference between the price which the complainants aver—but which these defendants deny—was agreed to be paid by these defendants for said stock and the price bid at said auction, and for other damages which the complainants pretend they have sustained by reason of these defendants' failure to accept and pay for the said stock. And these defendants, further answering, admit that about August 3d the said Schwartz, Dupee & Company deposited with the clearing-house of said stock exchange the sum of eleven thousand five hundred dollars ($11,500.00), and that the defendants also deposited with the said clearing-house the sum of eleven thousand five hundred dollars ($11,500.00); but they deny that any deposit was made by the said Schwartz, Dupee & Company, for or in behalf of the complainants, and they say that the said deposits were made by said Schwartz, Dupee & Company and by the defendants under the rules of said stock exchange, and for the security of the respective members of the said stock exchange connected with the substitution of said 1,150 shares.

These defendants admit that on the 24th day of September, 1896, the said Schwartz, Dupee & Company requested these defendants to consent that the Chicago stock exchange pay to the said Schwartz, Dupee & Company seven thousand dollars ($7,000.00) which they then and there pretended had been deposited on account of the said pretended purchase and sale, and offered to credit these defendants with seven thousand dollars ($7,000.00); and these defendants do not deny that the complainants joined in the request and offer regarding said deposit by said Schwartz, Dupee & Company.

And these defendants, further answering, say that they do not know whether on the 25th day of September, 1896, the said Schwartz, Dupee & Company notified the governing committee of the Chicago stock exchange that certain contracts of sale with
73 these defendants, were made by them on behalf of the complainants, and then and there demanded of the Chicago stock exchange and its governing committee, the payment to them of certain deposits, or whether the complainants, in writing concurred in the said request.

These defendants, further answering, say that the only purchase of Diamond Match Company stock made by them from the said Schwartz, Dupee & Company, in the month of July, 1896, or August, to be delivered August 31st, or any day in that month, was for 50 shares of stock, and that they were informed and believe that the said 50 shares of stock were not sold by the said Schwartz, Dupee & Co. for the complainants herein.

And these defendants, further answering, say that on the 3d day of August, 1896, the Chicago stock exchange was closed by order of the governing committee thereof, and so remained closed until the

5th day of November, 1896, and that from the said August 3d to the said November 5, 1896, there were no purchases or sales of stocks or securities upon the Chicago stock exchange.

And these defendants, further answering, say that whatever purchases of stock were made, or agreements to purchase, by these defendants, from the said Schwartz, Dupee & Company, acting for themselves, or as agents for the complainants herein, were made in view of, because of, and entirely on account of the constitution, by-laws and rules of the Chicago stock exchange.

And these defendants, further answering, say that it is provided in and by article XVII of the by-laws of the said Chicago stock exchange, of which the defendants and Schwartz, Dupee & Company were members, as follows:

"Should any member neglect to fulfill his contract on the day it becomes due, the party or parties contracting with him shall, after giving notice as required by section 2 of the preceding article, employ an officer of the board to close the same forthwith in the exchange by purchase or sale as the case may require, unless the price of settlement has been agreed upon by the contracting parties. In case of a failure of a creditor to close the contract as above, the price shall be fixed by the price current at the time such contract ought to have been closed under the rule. In all cases where an officer may be directed to buy or sell securities under this rule, the name of the member defaulting, as well as that of the member giving the order shall be announced. No order for the purchase or sale of securities under this rule shall be executed unless made out in writing over the signature of the party giving the order, who shall state the reason therefor; and it shall be the duty of the officer
74 who executes the order to endorse thereon the name of the purchaser or seller, the price and the hour at which the contract is closed, and hand the same to the secretary of the board, who shall within twenty-four hours, ascertain whether the party for whose account the order was given has paid the difference, if any, arising from the transaction; if not, the secretary shall report the default to the president. The duty devolved upon the officers of the exchange under this rule shall be performed without charge. No party shall be permitted to supply offers to buy or sell securities closed for his account under the rule; and when a contract is closed under this rule any action of the defaulter, direct or indirect, by which the prompt fulfillment of such contract is delayed, hindered or evaded to the detriment of the other contracting party, shall subject the offending party to suspension for not less than thirty days in the discretion of the governing committee, by a vote of two-thirds of the members present at the meeting. When contracts are closed out under the rule, any member supplying the bid or offer, and not duly receiving or delivering the stock, as the case may be, renders himself liable to prosecution under this article. Should any stock thus sold not be delivered until the next day, the contract shall continue, but the defaulting party shall be liable to pay such damage as may be assessed by the arbitration committee. The same rules as to notice, time and place that govern defaults in other contracts shall

apply to borrowed securities, which on non-delivery or receipt, must be borrowed or loaned in open market, except in case of actual default in receiving or delivering after notice to close the loan; then the same are to be bought or sold, as the case may be, for account of the defaulter in the manner provided in this article."

These defendants, further answering, say that the notice provided in section 2 of article XVI, and referred to in said article XVII, reads as follows:

"The notice above referred to shall be either personal, or shall be left in writing at the office of the party to be notified, or in case he has no office, then by public announcement, whenever the exchange may be in session."

And these defendants, further answering, say that both buyers and sellers of stock on the stock exchange, were entitled to the protection and advantages afforded by the constitution, by-laws and rules of said stock exchange, and that only upon said stock exchange was it possible, or is it now, in the city of Chicago, to obtain a fair or adequate price for stocks which are covered by contracts of either sale or purchase, made between members thereof.

75 And these defendants, further answering, say that all contracts for purchase or sales of stock, whether of the Diamond Match Company, or of any other stocks, made between Schwartz, Dupee & Company and these defendants in the month of August, 1896, were made under the by-laws above set forth, and with the agreement that said by-law should be a part of the contract.

And these defendants, further answering, say that during the time said stock exchange was closed, from the said August 3d until November 5, 1896, there were no means of carrying out the contracts made between members thereof, for the purchase and sale of stocks and other securities, and that in consequence thereof all purchase contracts failed, or settlements thereof must have been deferred until the opening of said stock exchange.

And these defendants submit to this honorable court, that all and every the matters in complainants' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the complainants are not entitled to any relief from a court of equity. And these defendants ask that they shall have the same benefit for their defense, as if they had demurred to the complainants' bill, and pray to be dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

MALCOLM M. JAMIESON,
ROLAND C. NICKERSON,
HARRY F. BILLINGS,
By TENNEY, McCONNELL, COFFEEN & HARDING, *Their Solicitors.*

TENNEY, McCONNELL, COFFEEN & HARDING,
Solicitors for Above Defendants.

(Endorsed:) Filed Apr. 25, 1898. S. W. Burnham, clerk.

On the same day, to wit: the twenty-fifth day of April, 1898, there was by leave of court filed in the clerk's office of said court a certain stipulation of facts, which said stipulation of facts is in the words and figures following, to wit:

76 *Stipulation of Facts. Filed April* 25, 1898.

Stipulation of facts.

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM JAMIESON ET AL. } 24261. In Chancery.

It is hereby stipulated between the parties to this cause, for the purposes of the trial thereof, that the following are facts, with reference to the transactions referred to in the pleadings herein, and in the evidence heretofore taken before the master.

That the purchases and sales of Diamond Match stock by Jamieson & Company, on behalf of different customers who employed them on the Chicago stock exchange, on July 25, 1896, with the names of the other members of the stock exchange, with whom the transactions were had, were as follows:

JAMIESON & CO.

	Bo't.	Sold.	Price.	July acc't.	Broker.
	50		229		Townsend, J. J.
	200		229		Brewster, E. L. & Co.
	50		228⅞		Brewster, E. L. & Co.
		50	227		Schwartz, Dupee & Co.
	100		229		Wilson & Sturges.
	50		228⅞		Foreman Bros.
	100		229		Spencer & Macdonald.
		50	226		Spencer & Macdonald.
		50	228		McClelland, Geo. A.
	150		229		Baldwin, Farnum & Co.
		100	227		Baldwin, Farnum & Co.
	50		228½		Breese & Cummings.
	50		228⅞		Counselman & Day.
	800	250			
	250				
Balance	550	Bought.			
		Sold.		Aug. acc't.	
	50		228		Spencer & Macdonald.
		100	231⅜		Spencer & Macdonald.
	50		230¼		Lobdell & Farwell.
	50		229		Wilson & Sturges.
	50		229		Wilson & Sturges.
		100	231½		Wilson & Sturges.
		200	231¼		Wilson & Sturges.

	Bo't.	Sold.	Price.	Aug. acc't.	Broker.
77	50		231½		Adsit, C. C.
	50		229		Schwartz, Dupee & Co.
	50		229⅛		Townsend, J. J.
		50	231½		Townsend, J. J.
	50		229		Dewar, A. L. & Co.
		50	231½		Baldwin, Farnum & Co
		50	231½		Herbst, Herman.
		50	231½		Peters, U. G. & Co.
	400	600			
		400			
Balance.....		200 sold			

That the purchases and sales of Schwartz, Dupee & Co. of Diamond Match stock, on the Chicago stock exchange, on behalf of the various customers who employed them, on the same day, 25th July, were as follows:

SCHWARTZ, DUPEE & Co.

	Bo't.	Sold.	Price.	July acc't.	Broker.
	100		229		Peters, R. A.
	100			229¼	Peters, R. A.
	100		228⅞		Brewster, E. L. & Co.
	50		227		Jamieson & Co.
	50		227		King, Alward & Co.
	100		227		Wilson & Sturges.
	300		227		Wasmansdorff, Wm. G.
Balance.	800	bought			
				Aug. acc't.	
		50	229		Jamieson & Co.
		50	229		King, Alward & Co.
		100	229		Wilson & Sturges.
		300	229		Wasmansdorff, Wm. G.
Balance.....		500			

78 That the settlement or substitution sheet furnished to Jamieson & Co. by the clearing-house of the stock exchange, as the result and settlement between Jamieson & Company and the other members of the stock exchange, of these transactions—omitting that part which refers to transactions in other stocks—was as follows:

CHICAGO, *July* 27, 1896.

We have settled all trades on your sheet this day with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
550		M	227½	Brewster, E. L. & Co.

Second Account.

CHICAGO, *July* 27, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
100		Match	228	Adsit, J. M.
100		Match	228	Foreman Bros.

That the purchases and sales by Jamieson & Co., on behalf of different customers who employed them, of Diamond Match stock on the Chicago stock exchange, on July 27, 1896, with the names of the other members of the stock exchange with whom the transactions were had, were as follows:

79 JAMIESON & Co.

	Bo't.	Sold.	Price.	July acc't.	Broker.
	550		Substi-		Brewster, E. L. & Co.
		50	tution		Slaughter, A. O. & Co.
		50	226¾		Jones, G. E.
		100	226¾		Baldwin, Farnum & Co.
		550	226¾		Foreman Bros.
			226¾		
	550	750			
		550			
Balance		200	sold		
		100	Substi-	Aug. acc't.	Adsit, J. M.
			tution		
			Substi-		
		100	tution		Foreman Bros.
	550		229		Foreman Bros.
	50		229		Jones, G. E.
	100		229		Baldwin, Farnum & Co.
	50		229		Slaughter, A. O. & Co.
	750	200			
	200				
	200				
Balance	550	Bought			

That the purchases and sales of Schwartz, Dupee & Co., of Diamond Match stock, on the Chicago stock exchange, on behalf of the various customers who employed them, on the same day, July 27th, were as follows:

Bought.	Sold.	Price.	July acc't.	Broker.
	350	226¾		Peters, R. A.
350		226¾		Peters, R. A.
Balance ...				
			Aug. acc't.	
	50	223	Substituted.	Peters, U. G. & Co.
	450	228	Substituted.	Dewar, A. L. & Co.
	350	229		Peters, R. A.
350		229		Peters, R. A.
	850			
	350			
Balance	500 sold.			

That the settlement or substitution sheet furnished to Jamieson & Co. by the clearing-house of the stock exchange, as the result and settlement between Jamieson & Co., and the other members of the stock exchange, of these transactions—omitting that part which refers to transactions in other stocks—was as follows:

CHICAGO, *July* 28, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
	200	M.	223	Wright, Geo. E. & Co.

2d Account.

CHICAGO, *July* 28, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
350		M.	225¼	Baldwin, Farnum & Co.
200		"	"	Breese & Cummings.

That the purchases and sales by Jamieson & Co. on behalf of different customers who employed them, of Diamond Match
81 stock on the Chicago stock exchange on July 28, 1896, with the names of the other members of the stock exchange with whom the transactions were had, were as follows:

JAMIESON & CO.

Bo't.	Sold.	Price.	July acc't.	Broker.
Balance.	200	Substitution.		Wright, Geo. E. & Co.
350		Substitution.	Aug. acc't.	Baldwin, Farnum & Co.
200		Substitution.		Breese & Cummings.
100		222		Adsit, C. C.
50		222		McClellan, Geo. A.
50		222		Lobdell & Farwell.
Bal. 750 bought.				

That the purchases and sales of Schwartz, Dupee & Co. of Diamond Match stock on the Chicago stock exchange, on behalf of the various customers who employed them, on the same day, July 28th, were as follows:

SCHWARTZ, DUPEE & CO.

Bo't.	Sold.	Price.	Aug. acc't.	Broker.
	500	225¼	Substituted.	Dewar, A. L. & Co.
	100	223½		Brewster, E. L. & Co.
	50	221⅞		McClellan, Geo. A.
	50	221⅞		Wright, Geo. E. & Co.
	50	221⅞		Gage.
	50	221½		Wilson & Sturges.
	50	222		Frank, F. G. & Bro.
	350	223		Hackney, H. C.
	50	222		Lobdell & Farwell.
Balance 1,250 sold.				

That the settlement or substitution sheet furnished to Jamieson & Co. by the clearing-house of the stock exchange, as the result and settlement between Jamieson & Co. and the other members of the stock exchange, of these transactions—omitting that part which refers to transactions in other stocks—was as follows:

CHICAGO, *July* 29, 1898.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

82

Bought.	Sold.	Stock.	Price.	Substitution.
	50 M.	M.	217½	Knight, Donnelley & Co.
	150	"	"	Durham, Albert.

2nd Account.

CHICAGO, *July* 29, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
150		M.	221⅞	Schwartz, Dupee & Co.
600		"	"	Wise, Henry.

That the purchases and sales by Jamieson & Co., on behalf of different customers who employed them, of Diamond Match stock, on the Chicago stock exchange, on July 29, 1896, with the names of the other members of the stock exchange with whom the transactions were had, were as follows:

JAMIESON & CO.

Bo't.	Sold.	Price.	July acc't.	Broker.
	50	Substitution.		Knight, Donnelley & Co.
	150	Substitution.		Durham, Albert.
	100	217		Slaughter, A. O. & Co.
Balance,	300	delivered July 31.		
150		Substitution.	Aug. acc't.	Schwartz, Dupee & Co.
600		Substitution.		Wise, Henry.

Balance 750 bought.

That the purchases and sales of Schwartz, Dupee & Co., of Diamond Match stock, on the Chicago stock exchange, on behalf of the various customers who employed them, on the same day, July 29th, were as follows:

83 SCHWARTZ, DUPEE & CO.

Bo't.	Sold.	Price.	Aug. acc't.	Broker.
	50	221⅞	Substituted.	Brewster, E. L. & Co.
	1,050	221⅞	Substituted.	Lobdell & Farwell.
	150	221⅞	Substituted.	Jamieson & Co.
	100	222		Raymond, Pynchon & Co.
	50	222		Frank, F. G. & Bro.
50		222¼		Brewster, E. L. & Co.
50		222¾		Peters, U. G. & Co.
50		223¼		Wilson & Sturges.
50		223½		Brewster, E. L. & Co.
100		223½		Hackney, H. C.
	1,400			
300	300			
Balance,	1,100	sold.		

That the settlement or substitution sheet furnished to Jamieson & Company by the clearing-house of the stock exchange, as the result and settlement between Jamieson & Company and the other members of the stock exchange, of these transactions—omitting that part which refers to transactions in other stocks—was as follows:

CHICAGO, *July* 30, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
300		M.	217¾	Raymond, Pynchon & Co

2nd Account.

CHICAGO, *July* 30, 1896.

We have settled all trades on your sheet this day, with the follo ing exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
50		M.	222⅝	Schwartz, Dupee & C
700		"	"	Brewster, E. L. & Co.

84 That the purchases and sales by Jamieson & Co., on beh of different customers who employed them of Diamond Mat stock, on the Chicago stock exchange, on July 30, 1896, with t names of the other members of the stock exchange with whom t transactions were had, were as follows:

JAMIESON & CO.

Bo't.	Sold.	Price.	Aug. acc't.	Broker.
50			Substitution.	Schwartz, Dupee &
700			Substitution.	Brewster, E. L. & C
50		224		Chapin & Gaylord.
50		223¾		McClellan, Geo. A.
Balance, 850 bought.				

That the purchases and sales of Schwartz, Dupee & Co., of D mond Match stock, on the Chicago stock exchange, on behalf of t various customers who employed them, on the same day, Ju 30th, were as follows:

SCHWARTZ, DUPEE & CO.

Bo't.	Sold.	Price.	Aug. acc't.	Broker.
	1,050	222⅝	Substituted.	Lobdell & Farw
	50	222⅝	Substituted.	Jamieson & Co.
Balance,	1,100 sold.			

That the settlement or substitution sheet furnished to Jamieson & Co. by the clearing-house of the stock exchange, as the result and settlement between Jamieson & Co. and the other members of the stock exchange, of these transactions—omitting that part which refers to transactions in other stocks—was as follows:

CHICAGO, *July* 31, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bo't.	Sold.	Stock.	Price.	Substitution.
650		M.	222	Baldwin, Farnum & Co.
200		"	"	Chapin & Gaylord.

That the purchases and sales by Jamieson & Co. on behalf of different customers who employed them, of Diamond Match stock, on the Chicago stock exchange, on July 31, 1896, with the names
85 of the other members of the stock exchange, with whom the transactions were had, were as follows:

JAMIESON & CO.

Bo't.	Sold.	Price.	Aug. acc't.	Broker.
650			Substitution.	Baldwin, Farnum & Co.
200			Substitution.	Chapin & Gaylord.
Balance,	850 bought.			

That the purchases and sales of Schwartz, Dupee & Co., of Diamond Match stock, on the Chicago stock exchange, on behalf of the various customers who employed them, on the same day, July 31st, were as follows:

SCHWARTZ, DUPEE & CO.

Bo't.	Sold.	Price.	Aug. acc't.	Broker.
	700	222	Substituted.	Frank, F. G. & Bro.
	400	222	Substituted.	Wilson & Sturges.
Balance,	1,100 sold.			

That the settlement or substitution sheet furnished to Jamieson & Co. by the clearing-house of the stock exchange, as the result and settlement between Jamieson & Co. and the other members of the stock exchange, of these transactions—omitting that part which refers to transactions in other stocks—was as follows:

CHICAGO, *Aug.* 1, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bo't.	Sold.	Stock.	Price.	Substitution.
200	.....	M.	222	Adsit, C. C.
600	.....	"	222	Baldwin, Farnum & Co.
50	.....	"	"	Schwartz, Dupee & Co.

That the purchases and sales by Jamieson & Co., on behalf of different customers who employed them, of Diamond Match stock, on the Chicago stock exchange, on August 1, 1896, with the names of the other members of the stock exchange with whom the transactions were had, were as follows:

86 JAMIESON & Co.

Bo't.	Sold.	Price.		Broker.
200			Substitution.	Adsit, C. C.
600			Substitution.	Baldwin, Farnum & Co.
50			Substitution.	Schwartz, Dupee & Co.
100		222	Substitution.	Adsit, C. C.
200		222		Slaughter, A. O. & Co.

Balance, 1,150 bought.

That the purchases and sales of Schwartz, Dupee & Co., of Diamond Match stock, on the Chicago stock exchange, on behalf of the various customers who employed them, on the same day, August 1st, were as follows:

Sheets must be in at 9:45 a. m.
Certified Checks for differences and for margins must be handed in before 10:15 a. m.; Saturdays at 9:45 a. m.

NAMES	PAY	COLLECT	W C St R R		N C St R R		Diamond Mt	
			Bot	Sold	Bot	Sold	Bot	Sold
Adsit, Chas. C.	175		700				300	
Adsit, J. M.								
Baker, Alfred L.	112 50				300			
Baldwin, Farnum & Co.							600	
Banta, C. V., Jr.								
Beckwith, W. L.								
Breese & Cummings								
Brewster, E. L. & Co.								
Cahn, B. R.								
Chapin & Gaylord	2525		1200		100			
Collins, Wm. R.								
Counselman & Day	306 25		1000		150			
Counselman, W. & Co.								
Crawford, Chas.								
Dewar, A. L. & Co.								
Durham, Albert								
Evans, W. N.								
Fleming, M. F.								
Farrington, Geo. E. & Co.								
Foreman Bros.	206 25				550			
Frank, F. G. & Bro.								
Hackney, H. C.								
Hammond, C. G. & Co.	262 50		1050					
Hattermann, Carl								
Henrotin, Chas.								
Herrick, E. Walter								
Hunt, E. S.								
Herbst, Herman								
Horton Bros.								
Hubbard, Whipple & Co.								
Jones, G. E.								
Jamieson & Co.								
King, Alward & Co.	112 50		450					
Kitchen, John B.								
Knight, Donnelley & Co.								
Lamb, B. B.	1425		450					
Lobdell & Farwell								
Lowe, H. E. & Co.								
McClellan, Geo. A.								
McGrath, Chas. H.								
McGurren, Henry								
McIntire, Paul G.								
Meyer, C. B.								
Miller, L. D.								
Norton, E.								
Polack, A. M.								
Peters, R. A.				300				
Peters, U. G. & Co.								
Ramsay & Co.								
Raymond, Pynchon & Co.								
Shields, L. B.								
Spencer & Macdonald								
Slaughter, A. O. & Co.	187 50		750				200	
Townsend, J. J.								
Wrenn, J. H. & Co.	612 50		2450					
Wasmansdorff, Wm. G.								
Watriss, F. H.								
Welch, W. M.								
Weed, Wm. F.								
Wheeler, A. W.								
Whiton, L. K.								
Whyland, C. A.								
Wilson & Sturges								
Wollenberger, H. & Co.								
Wrenn, W. B.								
Wright, Geo. E. & Co.								
Wise, Henry								
Winslow	75		300					
Schwartz, D. & Co.							50	
	6000 00		8350	300	1100		1150	

Statement of Jamieson & Co. to the

Chicago Stock Exchange, Clearing Department.

Chicago, August 3, 1896.

Exhibit. Statement Jamieson & Co.

R R Sold	Diamond Mt Bot	Diamond Mt Sold	Lake St Elev R Co Bot	Lake St Elev R Co Sold	Lake St Elev Trust Ctfs Bot	Lake St Elev Trust Ctfs Sold	Straw Bd Bot	Straw Bd Sold	N Y Bis Co Bot	N Y Bis Co Sold	C & C C & D C Bot	C & C C & D C Sold	Mil & C B & M Co Com Bot	Mil & C B & M Co Com Sold	Mil & C B & M Co pfd Bot	Mil & C B & M Co pfd Sold	S S C Line Bot	S S C Line Sold	B & M Co Bot	B & M Co Sold	B&MCo pfd Bot	B&MCo pfd Sold	P & P Co Bot	P & P Co Sold	P & P pfd Bot	P & P pfd Sold	Chi Gas Bot	Chi Gas Sold	Int Pack Co Bot	Int Pack Co Sold	INT PACK Co pfd Bot	INT PACK Co pfd Sold
	300								50																							
	600																															
									1000																							
			1250						500																							
									100																							
									50																							
											Copy.																					
			750																													
	200																															
	50																															
	1150		2000						700																							

Ef. 87-88.

Henry Clews, et al. vs. Malcolm McN. Jamieson } No 2445

Chicago Stock Exchange Clearing House Rules.

THE ACCOUNT.

Exhibit. Rules.

SECTION 1.—Under the following regulations transactions may be made for "the account," in any Securities listed for that purpose dealt in at the Exchange.

SEC. 2.—Deliveries of cash stock on transactions for "the account" shall be made on the last day of each month. Provided, however, should the last day of any month occur on a holiday or on a day when the Exchange is closed for business, then in that case deliveries shall be made on the first business day preceding.

SEC. 3.—All purchases and sales for "the account" shall be entered upon the blanks furnished by the manager selected for that purpose, and said blanks properly filled out, balanced, accompanied by a proof sheet and signed, must be delivered to said manager before 9:45 a. m. It shall be the duty of the manager to compare and examine the statements rendered, and to report should any errors be found to the parties making such errors, before 12 m., by written notice, which must be called for at the manager's office. Parties in error must at once proceed to adjust the same and correct their statements. All balances due from the members as shown by the statements shall be paid by certified check drawn to the order of the bank designated for that purpose and delivered to the manager before 10:15 a. m. the same day, excepting on Saturdays, when the balance must be paid before 9:45 a. m.

SEC. 4.—On balances due to members as shown by the statements, a draft for the amount payable to their own order shall be drawn upon the bank designated for that purpose and delivered to the manager before 10:15 a. m. (except on Saturday). The manager shall cause said draft, if correct, to be accepted by said bank and returned to the parties entitled thereto at the manager's office.

SEC. 5.—On or before 9:45 a. m. parties who have not borrowed or loaned their stock balances for "the account" shall extend said balances on their statements at the closing bid price, designated as short or long, and shall request the manager in writing to borrow or loan said stock balances for their account and risk at the closing bid price. Notice that such loans have been made and the names of the parties thereto will be delivered at the manager's office on or before 2 p. m. Loans made by the manager are for one day only, unless renewed between members.

SEC. 6.—Stock balances as shown by the statements rendered for cash settling days must be delivered and paid for at the closing bid price of the previous day, as per manager's notices, before 1:30 p. m. Provided, however, if satisfactory evidence is shown the clearing house committee that the cash stock is on hand in New York, or in transit for Chicago, three days' grace shall be given the seller to make the delivery, with interest, failing in which the clearing house committee shall cause to be purchased for account of delinquent said stock in whichever market in their judgment seems best; and the party so failing to deliver shall be held responsible for all loss or damage arising therefrom, but when a failure to receive or deliver occurs, nothing in these notifications shall be construed to relieve the last contracting parties to the transaction from their liabilities to each other.

SEC. 7.—Whenever a member fails to pay the balance due on his statement by 10:15 a. m. (except on Saturday), the manager shall notify the presiding officer of the Exchange, whose duty it shall be to forthwith cause the stock balances, as shown by the statement of the delinquent, to be bought in or sold out under the rules as the case may be, and assess the parties in interest on the statement pro rata. In case any member owes an additional amount caused by errors, disputes or assessments, said amount shall be paid within one hour from the time of notification of the same, otherwise the party will be considered as having failed and be treated accordingly.

SEC. 8.—Whenever a member is unable to meet his contracts on transactions made for "the account" he shall make a statement of his transactions, to be audited that day, and deliver it to the manager or presiding officer of the Exchange.

SEC. 9.—The manager, or any assistants employed by him in the manager's office, are positively prohibited from receiving any securities or currency or any other evidences of value, except the checks and drafts hereinbefore mentioned in these rules.

SEC. 10.—The same rules as to notice, time and place that govern defaults in other contracts shall apply to transactions for "the account."

SEC. 11.—Neither the Exchange nor any of its members (except those making the errors), the manager or any assistants employed by him, shall be responsible for any errors made in the statements to the manager, but the errors must be settled and adjusted at once between the members making said errors when notified by the manager to do so. The manager shall report any neglect or refusal to comply with these rules to the presiding officer of the Exchange.

SEC. 12.—The margin to be deposited on stocks traded in the Clearing House shall be as follows:

On stocks selling under	$ 50	per share	the margin shall be	$ 5	per share.					
	50 to 100	"	"	"	"	"	"	10	"	"
	100 " 150	"	"	"	"	"	"	15	"	"
	150 " 200	"	"	"	"	"	"	20	"	"
	200 and over	"	"	"	"	"	"	25	"	"

SEC. 13.—Margins deposited on trades in the Clearing House shall be considered as a margin or as a part of same under Section 1 of Article XVI of the By-Laws of the Stock Exchange. All such margins to be deposited in the Clearing House.

SEC. 14.—The clearing of trades and money is not completed until the substitutions are all made and notice posted to that effect by the manager of the Clearing House.

SEC. 15.—The brokers have the party they may trade with or party re-

House shall be as follows:

On stocks selling under	$ 50	per share	the margin shall be	$ 5	per share.					
50 to	100	"	"	"	"	"	"	10	"	"
100 "	150	"	"	"	"	"	"	15	"	"
150 "	200	"	"	"	"	"	"	20	"	"
200 and over		"	"	"	"	"	"	25	"	"

SEC. 13.—Margins deposited on trades in the Clearing House shall be considered as a margin or as a part of same under Section 1 of Article XVI of the By-Laws of the Stock Exchange. All such margins to be deposited in the Clearing House.

SEC. 14.—The clearing of trades and money is not completed until the substitutions are all made and notice posted to that effect by the manager of the Clearing House.

SEC. 15.—The brokers have the party they may trade with or party received from the Clearing House on the substitution of the day before, in case of any failures between the hours the sheets are put in the Clearing House (9:45 a. m.) and the time the notice is posted that the substitutions are ready for that day.

SEC. 16.—In the event of the announcement of the failure of any member to meet his contracts, all stocks bought in or sold out for him as "account" stock shall be settled outside of the Clearing House, and only such stocks as appear on the substitution sheet of the day of the failure shall be allowed to clear on the Clearing House sheet of the following morning.

SEC. 17.—When any member fails to execute any contracts required of him by the Clearing House, the margin checks deposited by such member for the protection of other members contracting with him through the Clearing House, shall be held first for that special purpose, and after satisfying the claims of such members to the extent of the margin rule of the Clearing House, the balance, if any, shall be held for a period not exceeding ten days as a trust fund for a pro rata distribution among other creditors who are members of the Chicago Stock Exchange.

Cameron, Amberg & Co., printers and stationers, Chicago.

SCHWARTZ, DUPEE & CO.

Bo't.	Sold.	Price.		Broker.
	50	222	Substituted.	Jamieson & Co.
	1,050	222	Substituted.	Raymond, Pynchon & Co.
	50	222		Wilson & Sturges.
Balance,	1,150 sold.			

That the settlement or substitution sheet furnished to Jamieson & Co. by the clearing-house of the stock exchange, as the result and settlement between Jamieson & Co. and the other members of the stock exchange, of these transactions—omitting that part which refers to transactions in other stocks—was as follows:

CHICAGO, *Aug.* 3, 1896.

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bought.	Sold.	Price.		Substitution.
1,150		M.	222	Schwartz, Dupee & Co.

That the clearing-house sheet which Jamieson & Co. put into the clearing-house on August 3, 1896, and which covered, among other transactions, those in Diamond Match above referred to, was as follows, and a clearing-house sheet of this form was put into the clearing-house by every member of the stock exchange who had dealings on those days, on each of the days above named, containing the transactions of the preceding day:

(Here follows statement of Jamieson & Co. marked pp. 87, 88.)

89 That the 500 shares sold July 25, 1896, by Schwartz, Dupee & Company, for the "August account" *was* sold for the account of Clews & Company, the complainants; that 200 shares of the 350 shares, sold July 27, 1896, by Schwartz, Dupee & Company, for the "August account," were also sold on account of complainants; that all of the other sales made by Schwartz, Dupee & Company, for the "August account," were made on behalf of other clients than the complainants; that the 750 shares sold by Schwartz, Dupee & Company, on July 28, 1896, were sold for four different clients of Schwartz, Dupee & Company; for one to the amount of 50 shares, for another to the amount of 300 shares, for another to the amount

of 350 shares, and for another to the amount of 50 shares. That the client for whom Schwartz, Dupee & Company bought the 350 shares on July 27th is the same person for whom they sold 350 shares on July 28th, and who sold in order to close his purchase of July 27th. That the client for whom Schwartz, Dupee & Company sold 300 shares on July 28th is the same person for whom Schwartz, Dupee & Company bought 300 shares on July 29th, and said purchase of July 29th was made to cover said person's sale of July 28th.

That the transactions heretofore set out in this stipulation of purchase and sale of Schwartz, Dupee & Company, Jamieson & Company and the other brokers whose names are stated, with the exception of those transactions which are marked as substitutions, were had by the brokers on behalf of different clients or principals whom they represented, and those transactions, so far as the different principals are concerned, were not settled or canceled by any of the substitutions, nor by any of the settlements between the brokers, except so far as where one client or principal of a broker was, through such broker, both a purchaser and a seller.

In other words, the settlements by substitutions or otherwise through the clearing-house were merely settlements between the members of the stock exchange, and were not settlements or cancellations of the contracts between the principals whom the brokers represented and the brokers themselves, except where the same broker had both purchased and sold for the same client.

LOWDEN, ESTABROOK & DAVIS,
Sol'rs for Complainants.
TENNEY, McCONNELL, COFFEEN & HARDING,
Solicitors for Jamieson, Nickerson, & Billings.
CHESTER M. DAWES,
Sol'r for Various Defendants — Schwartz, Dupee & Company.

(Endorsed:) Filed Apr. 25, 1898. S. W. Burnham, clerk.

90 Afterwards, to wit: on the eleventh day of May, 1898, in the December term of said court, 1897, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Order Setting Case for Hearing.

Order.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

WEDNESDAY, *May* 11, 1898.

Present: Hon. Peter S. Grosscup, district judge.

HENRY CLEWS ET AL.
vs. } 24261.
MALCOLM JAMIESON ET AL.

It is ordered by the court that this cause be set down for final hearing on pleadings and proofs on June 3, 1898.

Afterwards, to wit: on the twentieth day of May, 1898, in the December term of said court, 1897, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Order Substituting Solicitors.

Order.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

FRIDAY, *May* 20, 1898.

Present: Hon. Peter S. Grosscup, district judge.

HENRY CLEWS ET AL.
vs. } 24261.
MALCOLM M. JAMIESON ET AL.

Now come Estabrook & Davis, solicitors for complainants, and withdraw their appearance as such solicitors, and the appearance of Lowden, Estabrook & Davis is entered in the place and stead of Estabrook & Davis, withdrawn.

91 Afterwards, to wit: on the third day of June, 1898, in the December term of said court, 1897, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Hearing, June 3, 1898.

Order.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

FRIDAY, *June* 3, 1898.

Present: Hon. Peter S. Grosscup, district judge.

HENRY CLEWS ET AL.
vs.
MALCOLM JAMIESON ET AL. } 24261.

Now come the parties by their solicitors. Now this cause comes on to be heard on pleadings and proofs and on exceptions of defendants to the report of the master in chancery. The court, after hearing the arguments of counsel, takes the matter under advisement.

Afterwards, to wit: on the fifth day of July, 1898, there was filed in the clerk's office of said court a certain opinion by Judge Grosscup, which said opinion is in the words and figures following, to wit:

Opinion by Judge Grosscup. Filed July 5, 1898.

Opinion.

United States Circuit Court, Northern District of Illinois, Northern Division.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL.

GROSSCUP, *J.:*

The bill in this case is brought to charge a so-called trust fund, in the hands of the Chicago stock exchange, with the payment of a certain sum of money said to be due to the complainants
92 from the defendants. The record presents many interesting questions, but the facts essential to the disposition of the case can be briefly stated as follows:

The complainants, residents of the city of New York, in July, 1896, through their brokers, Schwartz, Dupee & Company, of the city of Chicago, sold upon the Chicago stock exchange, for the July account, five hundred shares of the Diamond Match Company's stock at $221⅛ per share, and subsequently, two hundred shares at 221¼. Later in the month, at the instance of the complainants, these transactions were changed to the August account at 229.

The purchase and sale was on both sides probably through brokers, whose respective principals remained undisclosed, either to the broker or principal on the opposite side of the transactions.

Under the rules and practice of the exchange the method of doing business between the brokers is stated to be as follows:

"At ten o'clock there is an official call at which the secretary and manager call all the stocks, bonds and securities on the official printed list; and as this call progresses, any member wishing to buy, or sell, bids thereon, and the record is made of the transaction; after which there is an irregular call, which closes at half past one, when the manager of the clearing-house announces the clearing-house or settlement prices for the day, which are the closing prices on the exchange for the respective stocks and securities. The manager then substitutes trades and sends out cards to all buying or selling on the amount for the current month, or for the next month; that on the 25th of the month, and thereafter until the second day before the end of the month, two calls are made, one for the current month and one for the next ensuing month, and this is done to allow those who wish to do so to change their accounts over to the next month. That this substitution was made by the clearing department by a system somewhat similar to that employed by the clearing-house for banks; that is, where a broker has purchasd and sold during the day the same amount of the same kind of stocks or bonds, his account is balanced by the clearing department, and all margins deposited by such broker may be withdrawn; that when sales and purchases are made by different brokers, one buying and the other selling, the same kind of stocks or bonds, a substitution is made by the manager of the clearing department, by which it appears that the broker selling has sold such stocks, not to the person to whom it was originally sold, but to a person or persons other than those to whom such sales were originally
93 made, and who originally bought of some one else, and that a broker purchasing stock has purchased from some broker other than the broker from whom he originally purchased the same; for instance, if A had sold 100 shares of stock to X, and B has bought the same amount of the same stock from Y, and X's and Y's accounts are balanced by other transactions, the substitution would make it appear that A, and the names of the parties with whom the original transactions had actually been made by A and B, would not appear on the clearing-house sheet; that in the transactions on said exchange it is then customary for the parties thus substituted and brought into the relation of buyer and seller with each other by the manager, to assent to the new regulations thus formed, and to confirm the transactions thus adjusted by the manager, and to put up the margins required by the rules, unless margins are already on deposit in the exchange, in which case they are transferred by the manager to the new account."

Pursuant to this method the firm of Schwartz, Dupee & Company on the 3d day of August, cleared its transactions with the other brokers, resulting in eleven hundred and fifty shares of Diamond Match stock, the sellers of which were represented by Schwartz, Dupee & Company being so transferred; that the defendants stood, by a substitution as to Schwartz, Dupee & Company, the purchasers, at 222. It is clear that, thereafter, as between Schwartz, Dupee &

Company and the defendants, there was such privity of contract that the defendants were under obligation to take of Schwartz, Dupee & Company, during the month, eleven hundred and fifty shares of the stock in question at 222.

On the same day, August 3d, the stock exchange was, by order of its officers, closed, and remained closed until the 5th of November following. On the last day of the month Schwartz, Dupee & Company tendered to the defendants certificates for the eleven hundred and fifty shares of the Diamond Match Company stock, which certificates the defendants refused to accept. Subsequently, in September, after due notice, Schwartz, Dupee & Company sold these shares at public auction to the highest bidder, realizing therefor the sum of one hundred and thirty dollars per share. This resulted in a loss to them of their principals of about ninety-two dollars per share.

Under the rules of the stock exchange, 10 per cent. par value of the stock dealt in had been deposited with the stock exchange as a fund in guaranty of the transactions. The object of the
94 present suit is to recover the difference between the contract and the selling price of these shares, and to subject this guaranty fund, amounting to seven thousand dollars, to the payment, *pro tanto*, of such loss.

There can be no question that there came into existence by the transactions stated a contract, whereby, primarily between Schwartz, Dupee & Company and the defendants, whereby the latter were obliged to purchase of the former, and the former were obliged to sell to the latter, during the month, seven hundred shares of this stock at the price of 222 per share.

Nor can there be any doubt that the undisclosed principals of either of these parties were entitled to step into the place of these respective brokers, and in their own name, and for their own benefit, insist upon the enforcement of the contract according to its terms. Clearly, under the rules of the exchange, each of the brokers bound himself, both to the other broker and to the principal whom the other broker represented, to carry out the terms of the cont-act.

The only question is whether the complainants were parties principal to the contract between Schwartz, Dupee & Company and the defendants. The evidence discloses that their authority to the brokers was to sell seven hundred shares of this stock at 229, and while the authority to sell for more than this might be implied, authority to sell for less could certainly not be. They were entitled, under their contract with Schwartz, Dupee & Company, to a purchaser at 229, or more; they were bound to no sale at a figure less. Neither Schwartz, Dupee & Company, nor any persons with whom that firm had contracted, could have compelled the complainants to deliver the stock at a price less than 229.

But the contract between Schwartz, Dupee & Company and the defendants was for the sale of seven hundred shares at 222. Under the contract between the brokers, the defendants could have demanded a conveyance at 222. But of whom could they have made

such demand? Certainly not from the complainants. Their contract was for 229, and no less.

The devices of the exchange for clearing and counterbalancing accounts between brokers could not, without their consent, change so essential a term of the complainants' sale. It cannot be that authority from a principal to sell at 229 can, without his conscious assent, be transformed into authority to sell at 222. The original understanding that the sale should be made under the rules and practice of the stock exchange cannot be interpreted to give such elasticity to the all-important feature of price. Who would
95 deal on the exchange as principal, if it were understood that the prices named had no fixity—that the obligation might be one thing today, and another totally different thing tomorrow? While the substitutions, resulting in prices unquestionably different from those originally authorized bind the brokers participating, they do not, in the absence of assent, reach over so as to change the contract rights of the principals. To hold otherwise would be to abolish, by judicial pronouncement, the authority on the faith and stability on which every transaction on the exchange is grounded.

But if the defendants, under the substitution, could not hold the complainants as principals to the contract for the sale at 222, then for want of mutuality the complainants are in no position to hold the defendants. There is, indeed, no identity of contract between the one the complainants authorized and the one entered into between Schwartz, Dupee & Company and the defendants. That the complainants now choose to accept it is of no significance; the legal fact remains that they are not so bound, and not being so bound, the defendants, on their part, are not legally bound.

Whatever legal obligation the defendants owe is, under the contract of substitution, to Schwartz, Dupee & Company alone. Between the complainants and the defendants there is no privity, and, therefore, no enforceable obligation.

For the foregoing reasons the bill must be dismissed.

(Endorsed:) Filed July 5, 1898. S. W. Burnham, clerk.

96 Afterwards, to wit: on the eleventh day of July, in the July term of said court, 1898, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Judgment, July 11, 1898.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MONDAY, *July* 11, 1898.

Present: Hon. Peter S. Grosscup, district judge.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS
vs.
MALCOLM M. JAMIESON, ROLAND C. NICKERSON, HARRY F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George F. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorf, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom. } 24261.

The court having considered and being now fully advised upon the motion for a rehearing upon petition filed, announces its opinion that said motion should be overruled and the exceptions to the master's report be sustained. It is thereupon considered and adjudged by the court that said motion for rehearing be and the same is hereby denied; that the exceptions to the master's report herein be and the same are hereby sustained, and the bill of complaint herein be and the same is hereby dismissed for want of equity at the costs of the complainant-, and that *exception* issue therefor.

97 Afterwards, to wit, on the twenty-third day of July, 1898, came the complainants in said entitled cause by their solicitors and filed in the clerk's office of said court their petition for appeal, which said petition for appeal is in the words and figures following, to wit:

Petition for Appeal. Filed July 23, 1898.

Petition for Appeal.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS
vs.
MALCOLM M. JAMIESON, ROLAND C. NICKERSON, HARRY F. BILLINGS, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorf, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom.

The above-named complainants, Henry Clews, Charles M. Foster, and James B. Clews, conceiving themselves aggrieved by the order and decree entered herein on the 11th day of July, A. D. 1898, sustaining the exceptions of defendants, Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings, to the report of the master and dismissing the complainants' bill in the above-entitled proceedings, do hereby appeal from said order and decree to the United States circuit court of appeals for the seventh circuit, and they pray that their appeal may be allowed, and that a transcript of the record and proceedings, papers and evidence, upon which said order and
98 decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the seventh circuit. And the said complainants file herewith their assignment of errors herein, and their bond for said appeal.

LOWDEN, ESTABROOK & DAVIS,
Solicitors for Complainants.

H. J. DAVIS, *Of Counsel.*

(Endorsed :) Filed Jul- 23, 1898. S. W. Burnham, clerk.

On the same day, to wit, the twenty-third day of July, 1898, came the complainants in said entitled cause by their solicitors and filed in the clerk's office of said court their assignment of errors, which said assignment of errors *are* in the words and figures following, to wit :

Assignment of Errors. Filed July 23, 1898.

Assignment of Errors.

In the United States Circuit Court of Appeals for the Seventh Circuit.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. Clews
vs.
MALCOLM M. JAMIESON ET AL.
} Assignment of Errors.

The above-named complainants, Henry Clews, Charles M. Foster, and James B. Clews, say that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

First. The circuit court erred in sustaining the first exception of the defendants, Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings, to the report of E. B. Sherman, master in chancery.

Second. The circuit court erred in sustaining the second exception of defendants, Malcolm M. Jamieson, Roland C. Nickerson, and Harry F. Billings, to the report of E. B. Sherman, master in chancery.

Third. The circuit court erred in sustaining the third exception of defendants, Malcolm M. Jamieson, Roland C. Nickerson,
99 and Harry F. Billings, to the report of E. B. Sherman, master in chancery.

Fourth. The circuit court erred in holding and deciding that the contract entered into between the defendants, Schwartz, Dupee & Company and Jamieson & Company was not made by Schwartz, Dupee & Company on behalf of complainants.

Fifth. The court erred in holding and deciding that whatever legal obligations the defendants, Jamieson & Company owed under the contract entered into by them and Schwartz, Dupee & Company on August 3, 1896, they owed to Schwartz, Dupee & Company alone.

Sixth. The court erred in holding and deciding that the complainants were not equitably entitled to the money on deposit with the Chicago stock exchange, to secure the performance of the contract entered into between Schwartz, Dupee & Company and Jamieson & Company.

Seventh. The court erred in holding and deciding that the complainants were not in equity entitled to recover the proceeds of the contract entered into between Schwartz, Dupee & Company and Jamieson & Company on August 3, 1896, so far as it related to the sale of seven hundred shares of stock of the Diamond Match Company.

Eighth. The court erred in dismissing complainants' bill for want of equity.

Ninth. The court erred in denying complainants the relief prayed

for in their amended bill, and in refusing to enter a decree in favor of complainants directing the defendants, Malcolm M. Jamieson, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan and A. L. Dewar, constituting the governing committee of the Chicago stock exchange, to pay the complainants the amount of fourteen thousand dollars ($14,000) held by said governing committee in trust to secure the performance of the contract of August 3, 1896, between Schwartz, Dupee & Company and Jamieson & Company, so far as it related to the sale of seven hundred (700) shares of stock of the Diamond Match Company.

Tenth. The court erred in refusing to enter a decree in favor of complainants against the defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings for the payment by said
100 defendants of the amount of the damages sustained by complainants by reason of the failure of Jamieson Company to accept and pay for seven hundred (700) shares of stock of the Diamond Match Company under their contract with Schwartz, Dupee & Company of August 3, 1896.

Eleventh. The court erred in refusing to enter a decree in favor of the complainants against the defendants, Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, for the sum of fifty-seven thousand four hundred dollars ($57,400), being the balance due from said defendants under their contract for the purchase of Diamond Match stock from Schwartz, Dupee & Company, the agents and brokers of complainants, in addition to the amount on deposit in the stock exchange.

Twelfth. The court erred in holding that under the evidence the complainants, as principals, were not in equity entitled to enforce the obligations of Jamieson & Company for the purchase of seven hundred (700) shares of stock of the Diamond Match Company, arising under the contract made by Jamieson & Company on August 3, 1896, with Schwartz, Dupee & Company, the agents and brokers of complainants.

Wherefore said complainants, Henry Clews, Charles M. Foster and James B. Clews, pray that the order and judgment of the said circuit court of the United States for the northern district of Illinois, northern division, be reversed, and that the said circuit court be directed to enter a decree for the complainants, as prayed for in their bill of complaint, and as recommended in the report of the master filed in said circuit court January 22, 1898.

LOWDEN, ESTABROOK & DAVIS,
Solicitors for Complainants and Appellants.

HERBERT J. DAVIS, *Of Counsel.*

(Endorsed:) Filed Jul- 23, 1898. S. W. Burnham, clerk.

101 On the same day, to wit, the twenty-third day of July, in the July term of said court, 1898, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Order Allowing Appeal. Filed July 23, 1898.

Order allowing appeal.

July 23, 1898.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

Now come the complainants by their solicitors and present their petition for appeal to the United States circuit court of appeals for the seventh circuit from the order and decree entered herein on the 11th day of July, A. D. 1898, and also file their assignments of error.

The court having considered and being duly advised, it is ordered that said appeal be allowed upon the complainants filing a bond in the sum of five hundred dollars ($500) with surety to be approved by the court.

On the same day, to wit, the twenty-third day of July, 1898, came the complainants in said entitled cause as principals, and the United States Fidelity and Guaranty Company, a corporation, as surety, and filed in the clerk's office of said court a certain appeal bond, which said appeal bond is in the words and figures following, to wit:

Appeal Bond. Filed July 23, 1898.

Appeal bond.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS, Complainants,
vs.
MALCOLM M. JAMIESON ET AL., Defendants.

Appeal bond.

Know all men by these presents, that we, Henry Clews, Charles M. Foster, and James B. Clews, as principals, and The
102 United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland, as surety, are held and firmly bound unto Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William

V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom, in the sum of five hundred dollars ($500), for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the fourteenth day of July, A. D. 1898.

Whereas, the above-named Henry Clews, Charles M. Foster, and James B. Clews, have appealed from the order and decree of the said court in the above-entitled suit to the United States circuit court of appeals for the seventh circuit to reverse the decree therein rendered by the said circuit court.

Now, therefore, the condition of this obligation is such that if the above-named Henry Clews, Charles M. Foster, and James B. Clews, shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[3-cents internal-revenue stamps.]

HENRY CLEWS, [SEAL.]
CHARLES M. FOSTER, [SEAL.]
JAMES B. CLEWS, [SEAL.]
By LOWDEN, ESTABROOK & DAVIS,
Their Attorneys and Solicitors.

[SEAL.] THE UNITED STATES FIDELITY AND GUARANTY COMPANY, [SEAL.]
By GEORGE D. WEBB,
Attorney-in-fact, Surety.

The above bond and the surety thereon approved by me this 23d day of July, A. D. 1898.

P. S. GROSSCUP, *Judge.*

(Endorsed:) Filed Jul- 23, 1898. S. W. Burnham, clerk.

103 And on the 22d day of January, 1898, there was filed in the office of the clerk of said court the report of said master, Elijah B. Sherman, of the proofs taken by him, which report is in words and figures as follows:

Index to Testimony.

In the Circuit Court of the United States for the Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
M. M. JAMIESON ET AL. } 24261. In Chancery.

Testimony in behalf of complainants and defendants, taken, pursuant to an order of reference in said cause, before Elijah B. Sherman, a master in chancery of said court, commencing on the eighth day of June, 1897, and continuing from time to time, as hereinafter noted.

Present: Messrs. Estabrook & Davis, solicitors for complainants; Hon. S. P. McConnell, solicitor for defendants.

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COMPLAINANTS' EXHIBITS.

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105 *Defendants' Evidence.*

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	Introduced.	Copied.
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Circuit Court of the United States, Northern District of Illinois, Northern Division.

HENRY CLEWS ET AL.
vs.
M. M. JAMIESON ET AL.

JUNE 8, 1897.

Met pursuant to agreement.

Present: Messrs. Estabrook & Davis, solicitors for complainants, and Hon. S. P. McConnell, solicitor for defendants.

106 *Testimony of H. F. Billings.*

H. F. BILLINGS, a witness called on behalf of complainants, being first duly sworn, testified as follows:

Direct examination by Mr. DAVIS:

Q. Mr. Billings, you are one of the defendants?
A. Yes.
Q. And a member of the firm of Jamieson & Co.?
A. I am.
Q. Will you produce a letter signed Henry Clews & Company, by Estabrook & Davis, dated September 10, 1896?
A. I have it here (producing letter).
Q. That was received by you on or about September 10th, was it?
A. Yes.

Mr. DAVIS: This is offered in evidence as Complainants' Exhibit 1.

It is stipulated that this and all other letters may be copied into the record, the copy to have the same effect as the original, and the original retained by the owner.

EXHIBIT 1 TO TESTIMONY OF H. F. BILLINGS.

EXHIBIT 1.

SEPTEMBER 10, 1896.

Messrs. Jamieson & Company, No. 187 Dearborn street, Chicago.

DEAR SIRS: This is to notify you that on Tuesday, the 15th day of September, 1896, at one o'clock p. m., we shall offer for sale, at public auction, to the highest bidder for cash, at the judicial sales-rooms of the Chicago Real Estate Board, No. 57 Dearborn street, in the city of Chicago, county of Cook and State of Illinois, seven hundred (700) shares of stock of the Diamond Match Company, and at said time and place will sell the same to the highest bidder for cash. Said sale will be made for your benefit on account of your contracts with Schwartz, Dupee & Co. on the Chicago stock exchange for the purchase by you of said shares, in which contracts the said Schwartz, Dupee & Co. were acting as agents of the undersigned, said shares of stock having been tendered you by Schwartz, Dupee & Co. in fulfillment of said contracts on the 31st day of August, 1896.

You are further notified that should said stock at said sale sell for less than the amount due from you on said contracts we will look to you to settle the difference, and we will hold you responsible for any loss on account of said contracts.

107 The contracts of sale referred to herein are the same mentioned in the letter of Schwartz, Dupee & Co., accompanying this notice.

In the meantime we hold said stock ready for delivery to you upon payment of the amount due from you under said contracts of purchase.

Very truly yours, HENRY CLEWS & CO.,
By ESTABROOK & DAVIS,
Their Attorneys.

Q. Will you also produce a letter signed Schwartz, Dupee & Co., dated September 9, 1896?

A. Yes. (Producing letter.)

Mr. DAVIES: We will offer it in evidence as Complainants' Exhibit 2. It is as follows:

EXHIBIT 2 TO TESTIMONY OF H. F. BILLINGS.

CHICAGO, *September* 9, 1896.

Messrs. Jamieson & Co., 187 Dearborn street, Chicago, Illinois.

DEAR SIRS: On August 31, 1896, we tendered you seven hundred (700) shares of Diamond Match stock in settlement of sales made by us. The sales made were 500 shares July 25th, and 200 shares July 27, 1896, you being substituted through the clearing-house of the Chicago stock exchange August 3, 1896, as the purchaser of said stock.

This is to notify you that said sales were made by us as agents for Henry Clews & Co., of New York, who may rightfully take any proceedings to enforce the contracts for said sales, and who are authorized to make settlement thereof.

Very truly yours, SCHWARTZ, DUPEE & CO.

Q. That was received by you on September 10, was it not?

A. I couldn't say as to that—about that.

Q. Will you produce a letter, dated September 22, from Henry Clews & Co.?

A. By Estabrook & Davis?

Q. By Estabrook & Davis.

A. Yes, sir. (Producing letter.)

Q. This was received by you on September 22, was it not?

A. Well, about then.

Mr. DAVIS: We offer it in evidence as Complainants' Exhibit 3, as follows:

EXHIBIT 3 TO TESTIMONY OF H. F. BILLINGS.

SEPTEMBER 22, 1896.

Messrs. Jamieson & Company, Chicago, Illinois.

DEAR SIRS: Pursuant to our notice to you dated the 10th inst., which we personally left with Mr. Billings on the 11th, we have to inform you that on the 15th day of September we adjourned
108 the auction sale of the seven hundred (700) shares of stock of the Diamond Match Company until the 22nd day of September, 1896, at one o'clock p. m.

We sent out several hundred circulars to persons interested, and to such persons as we might reasonably suppose were interested, both of the original date fixed for the sale and of the date to which the sale was adjourned.

We today offered the stock for sale to the highest bidder and it was struck off at the price of one hundred and thirty dollars ($130) per share. The shares offered were the same ones tendered you by Schwartz, Dupee & Company on the 31st of August, as stated in their letter of the 9th inst.

This is to further notify you that we shall hold you liable for the difference between the price at which you purchased and the price for which the stock was sold at auction, and for all damages which we have sustained by reason of your failure to accept and pay for said stock.

Very truly yours, HENRY CLEWS & CO.,
By ESTABROOK & DAVIS."

Q. Produce the letter from Schwartz, Dupee & Co., dated September 23, 1896.

A. That is the one. (Producing letter.)

Q. That was also received about the time it was dated?

A. Yes.

Mr. DAVIS: This letter is introduced in evidence as Complainants' Exhibit 4, which is as follows:

EXHIBIT 4.

SEPTEMBER 23, 1896.

Messrs. Jamieson & Company, 187 Dearborn street, Chicago, Illinois.

DEAR SIRS: As the Chicago stock exchange has closed and it is uncertain when it will be opened, we have to request that you consent that the Chicago stock exchange pay to us the margins deposited on account of the sale of seven hundred (700) shares of the stock of the Diamond Match Company, sold by us for Henry Clews & Company, and purchased by you, according to the clearing-house sheet, of August 3d.

Upon receipt of the margins from the clearing-house the amount deposited by you, to wit: ten dollars per share, will be credited you on account of said purchase; without prejudice, of course, to the right of Henry Clews & Company to demand and recover from you any damages sustained by reason of your failure to accept and pay for said stock over and above the amount deposited by you to protect said sale.

Yours truly, SCHWARTZ, DUPEE & CO.

We concur in the above request, and upon receipt of said deposit by Schwartz, Dupee & Company, Jamieson & Company will be

credited with the amount of the deposit of Jamieson &
109 Company. We shall look, however, to Jamieson & Company to settle any damages over and above the amount of said credit.

HENRY CLEWS & CO.,
By ESTABROOK & DAVIS,
Their Att'ys.

Q. Will you produce the Chicago Stock Exchange clearing-house substitution sheet of August 3, 1896, showing substitutions made by the clearing-house on that day?

A. I have it here. (Producing card.)

Mr. DAVIS: We offer it in evidence and will read it into the record so far as it pertains to the issues.

Judge MCCONNELL: We object to the competency of that paper, and the relevancy of it.

Q. Where did you get this paper, Mr. Billings?

A. It was brought back by our boy from the stock exchange.

Q. Who issued that paper?

A. Any more than you see the heading, that is all.

Q. Is this one of the daily sheets issued by the manager of the clearing-house?

A. I don't know; it comes from the clearing-house; I presume so.

Q. Issued under the rules of the——

Judge MCCONNELL: We object; this is your witness—a leading question.

Mr. DAVIS: I think we are entitled to ask any sort of leading questions.

Judge MCCONNELL: Issued under the rules—it seems to me is calling upon this witness to express an opinion.

The WITNESS: I don't know as to that, you know.

Mr. DAVIS: I will offer it in evidence, and will afterwards introduce witnesses to prove the method of its issuance, as Complainants' Exhibit 5.

Judge MCCONNELL: I want my objection preserved as to the competency or relevancy of the testimony.

The MASTER: Let it be admitted subject to the objection.

EXHIBIT 5.

CHICAGO STOCK EXCHANGE,
CLEARING DEPARTMENT,
CHICAGO, *August* 3, 1896.

Jamieson:

We have settled all trades on your sheet this day with the following exceptions which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
1,150	....	M.	222	Schwartz.

Cross-examination waived.

JUNE 8, 1897.

110 *Testimony of John W. Conley.*

JOHN W. CONLEY, a witness called on behalf of complainants, being first duly sworn, testified as follows:

Direct examination by Mr. DAVIS:

Q. You are a member of the firm of Schwartz, Dupee & Company?

A. Yes, sir.

Q. Do you know the firm of Jamieson & Company?

A. I know them as a firm, yes, sir.

Q. And did you in August, 1896?

A. Yes, sir.

Q. Mr. Conley, did you, in behalf of Schwartz, Dupee & Company, on August 31, 1896, have any business with the firm of Jamieson & Company touching the delivery of shares of stock of the Diamond Match Company?

A. I did.

Q. If so, state what that business was.

A. I called upon the firm of Jamieson & Company, on August 31 last, at about 1.20 p. m., and made a tender to them of 1,150 shares of Diamond Match; as I understood at the time, one of the members of the firm——

Judge MCCONNELL: We will have to object to what he understood at the time.

The MASTER: State what was said and what took place, please.

A. I first went into the private office of Jamieson & Company and inquired for Mr. Jamieson; some one directed me to him, and I told him I desired to deliver 1,150 shares of Diamond Match; he referred me to the office outside. I went out there and called at the delivery—called at the desk of the stock clerk, told him that I was there to deliver 1,150 shares of Diamond Match. He says, Well, let me see the stock. Well, I said to him, I have the stock here in my possession. He says, I want the numbers, I want to see the stock. I passed the stock in to him, he examined it very carefully, seemed to make some memorandum of something in relation to it, I don't know what, and he pushed the stock back and said that he would not receive the stock because the parties for whom he had bought would not receive it from him. I took the stock and went back to the office.

Q. What was that stock that you tendered to them then?

A. It was 1,150 shares of Diamond Match.

Q. They were certificates of stock?

A. Certificates of stock.

111 Q. How long had you dealt in Diamond Match stock at that time?

A. O, that would be very hard for me to state.

Q. Well, for some time before that?

A. O, yes.

Q. You were familiar with their stock certificates, were you, issued by the company?

A. Yes.

Q. Have you the numbers of the certificates you tendered at that time?

A. I have.

Q. What were the numbers?

A. Well, if you will allow me, here is a memorandum that was made out at the time from the number of shares and the number of the certificates.

Q. You can give the number of the shares, can you?

A. I can.

Q. That is, the certificates of shares?

A. Yes.

Q. Give them.

A. Well, there was A 680, 100 shares; A 681, 100 shares; A 682, 100 shares; A 683, 100 shares; A 684, 100 shares; A 685, 100 shares; A 686, 100 shares; A 687, 100 shares; A 688, 100 shares; A 689, 100 shares; 9096, 50 shares; 9097, 50 shares; 9098, 50 shares.

Q. Do you know now in whose names those certificates stood?

A. Well, we have no memorandum of that.

Q. You didn't make a memorandum?

A. I think—no, you don't allow me to state that. I can't state exactly.

Q. From your memory can you tell?

A. From my memory——

Judge McConnell: We object.

A. Well, to the best of my judgment and belief.

Judge McConnell: We don't know what you mean; are you referring to the name that appeared on the face of the certificate?

Mr. Davis: Yes.

Judge McConnell: You don't say that; you said in whose names did they stand; that would go to the question how they stood on the books of the company.

Q. Do you know whose name appeared on those certificates as the owners of the shares of stock mentioned in them?

A. I couldn't state.

Q. You don't remember?

A. I couldn't state it positively.

Mr. Davis: I presume if there is any point made on that I will have to send over and get them.

Judge McConnell: I am not raising any point on that so far.

Mr. Davis: Your answer admits that the shares were tendered, but you don't know whether they were regularly endorsed or not; if any point is made that the stocks were not regularly endorsed, we will have to send over and get them.

112 Judge McConnell: Mr. Billings examined them, I don't know. Mr. Billings, step over here; what is the fact about that? We shall make no point about the stock having been

signed—about it having been on the face of it apparently signed by the person to whom the stock had been issued.

Mr. DAVIS: Then, as I understand, you make no point that the stock was not regularly endorsed and was a sufficient tender, so far as that goes?

Judge MCCONNELL: Well, I don't think we will pass on the question whether it was a sufficient tender or not; we are not raising any point about the regularity of the stock.

Q. Was anything said, Mr. Conley, at that time, except what you have stated, as a reason why they would not accept the stock?

A. That was the only reason given at the time.

Q. Were you present at the rooms of the Chicago real-estate board on September 22, 1896, at which time there was offered for sale at auction 700 shares of stock of the Diamond Match Company?

A. I was.

Q. At whose request did you attend at that time?

A. At your request.

Q. Did you have with you then any shares of stock of the Diamond Match Company?

A. I had 700 shares with me at that time.

Q. Were they some of the shares you have spoken of as having been tendered on the 31st of August?

A. Yes, sir.

Q. And for what purpose did you have those shares of stock there?

A. To be delivered—to deliver them to you.

Q. Do you know the complainants in this suit, Henry Clews & Company?

A. I do.

Q. How long have you known them, Major?

A. O, a good many years; I guess twenty-five years.

Q. Do you know all of the complainants personally?

A. Well, I couldn't answer that because I don't know how many members there are to the firm; I know three of the members.

Q. The complainants are Henry Clews, Charles M. Foster and James B. Clews.

A. Yes, sir; I know all three.

Q. And has your firm been their correspondent?

A. So far as I know, we are their Chicago correspondent.

Q. Has been for some time prior to August, 1896?

A. O, yes, a long while.

Q. Do you know who formed the partnership of Henry Clews & Company?

A. The parties you have just read—Henry Clews, Mr. Foster and James B. Clews.

113 Cross-examination by Judge MCCONNELL:

Q. Have you repeated the entire conversation that occurred at the office of Jamieson & Company?

A. So far as my recollection serves me.
Q. You told them that you had this stock and tendered it in behalf of Schwartz, Dupee & Company?
A. Yes, sir.
Q. Now, isn't it a matter of fact that Mr. Billings here was the gentleman that you saw at the desk?
A. Yes, sir.
Q. Didn't he say to you that the reason why he couldn't accept the tender of the stock was, first, because the stock exchange was closed; and, secondly, that W. H. and J. H. Moore, had been the parties for whom they had bid for the stock, and that they were not able to take it at that time because of the fact that the stock exchange was closed?
A. Well, since you remind me, he did say that the stock exchange was closed and the parties for whom the stock was purchased wouldn't receive it of them, hence he could not take it from us.
Q. When was the stock exchange closed?
A. I couldn't state the time.
Q. Well, you can approximately, can't you?
A. No, really, I could not, because——
Q. Isn't it true that the stock exchange was closed on August 3rd, or about that time, and continuously remained closed until November?
A. Well, that is about as I remember it, I couldn't remember the particular day that it closed.
Q. Well, approximately it was closed about August and did not open until about the 1st of November?
A. Approximately, yes, I should say that was the case.
Q. Major Conley, did not Mr. Billings say to you in words: "This stock was purchased for W. H. and J. H. Moore, the stock exchange being closed, we cannot receive the stock"?
A. Well, of course I couldn't—I could only give you in substance.
Q. Is that the substance of what Mr. Billings said?
A. I don't know but what he did say. My memory is not so good as it has been, but it was one or the other, that it was purchased for the Moores, or the parties for whom it was purchased; now I couldn't state positively which, but that was the substance of it, it was one of the other.

Signatures of witness waived by agreement of counsel.

JUNE 8, 1897.

114 *Testimony of Walter Comstock.*

WALTER COMSTOCK, a witness called on behalf of complainants, being first duly sworn, testified as follows:

Direct examination by Mr. DAVIS:

Q. State your full name.
A. Walter Comstock.
Q. What is your business, Mr. Comstock?

A. With Schwartz, Dupee & Company, stock clerk; handle the orders.

Q. Were you so engaged in July and August of 1896?

A. Yes, sir.

Q. At that time were Clews & Company of New York correspondents of the firm of Schwartz, Dupee & Company?

A. They were; yes, sir.

Q. In July, of 1896, will you state what orders, if any, relating to the purchase or sale of Diamond Match Company stock you received, or the firm of Schwartz, Dupee & Company received from Clews & Company?

Judge McConnell: We object; the transactions which occurred between Clews & Company and Schwartz, Dupee & Company cannot affect us, we claim, unless it appears that the transactions were disclosed at the time.

Mr. Davis: If your honor please, our position is this: These sales are made on the board of course, only between the brokers, it is true, one broker don't know who the others' clients are in all of those matters, but this is a suit by Clews & Company and they simply seek to enforce——

Judge McConnell: I don't care a bit about keeping it out, except I want my objection stated; we can argue this before the master and court with everything in; at the same time I don't want to waive a thing; I object to the whole matter.

The Master: It may be admitted subject to the objection.

Mr. Davis: I simply want to show complainants' rights, complainants' interests.

(Question read.)

A. Well, I remember of one order of 500 shares.

Judge McConnell: Hold on.

Q. Have you copies of the telegrams with you?

A. No, I have not.

Q. Can you procure them?

A. Yes, I think I can.

Mr. Davis: I have copies of all those, and if there is any objection on that score, I suppose I will have to send Mr. Comstock to bring them.

115 Judge McConnell: If you have copies we will allow the copies to go in.

The Master: You will stipulate that copies may be received in lieu of the originals, subject to all objections?

Judge McConnell: Subject to the objections that might be made to the originals. I wish to reserve all objections to the dealings that occurred between Clews & Company and Jamieson & Company.

Mr. Davis: I thought I had copies, but I haven't.

Judge McConnell: If you will produce a written history of that matter and submit it to us we will probably not object to it at all, but let you put it in.

Mr. Davis: I thought I had copies of them, but they don't go back to that time.

Judge McCONNELL: He may call from this witness, if he pleases, for all the correspondence, or a copy of all the letters which they received from Clews & Company relative to Diamond Match within a period that they want to say. The only thing that we will have to insist on, we are entitled to all anyway, we will have to have the orders, the correspondence won't show it.

Mr. DAVIS: You mean the orders from the complainants?

Judge McCONNELL: The orders from the complainants to Schwartz, Dupee & Company; we needn't come back here for that purpose, if you will have them written up and submit it to us.

Q. Mr. Comstock, can you produce the orders from Clews & Company to Schwartz, Dupee & Company, to buy or sell Diamond Match stock, in the month of July, 1896?

A. Pretty sure that I can, they should be over there, were the last time I looked at them.

Q. Will you have copies made of those?

A. Yes, sir.

Mr. DAVIS: The copies of telegrams, letters and orders produced are introduced in evidence as Complainants' Exhibit- 6 to —.

Q. Mr. Comstock, what sales of Diamond Match stock in the month of July were made by Schwartz, Dupee & Company on the Chicago stock exchange?

A. Well, July 25, we sold 500 shares.

Judge McCONNELL: I desire to have an objection reserved to that question, and to the answer which has been made.

Mr. ESTABROOK: On what ground?

Judge McCONNELL: Incompetent, and not the proper way to show it.

Mr. DAVIS: I will have Mr. Wilkins here, and with all his books to show all those transactions before we get through; all I care to show by this witness now is, that the sales which were made,
116 were made on behalf of the plaintiff-, so as to show the plaintiffs' interest, and the actual transactions on the exchange I will show by Mr. Wilkins when he returns.

The MASTER: Proceed, subject to the objection.

A. We sold 500 shares on July 25th; 200 shares on the 27th.

Q. On whose account were those sales made?

Judge McCONNELL: Object.

Q. Who were your clients in that transaction?

Judge McCONNELL: Object.

A. Henry Clews & Company.

Q. Did you, during that month, make other sales on the exchange for other clients?

A. Yes.

Q. Do you know what were the stock balances on August 3, of Diamond Match stock of Schwartz, Dupee & Company?

A. What were the stock balances?
Q. Yes.
A. The number of shares were long or short, do you mean?
Q. Yes.
A. I don't remember the exact number of shares. I will have to look at the records. I can't remember the number of shares each day.
Q. Mr. Comstock, I will hand you a card, and ask you if you are familiar with the method of settling trades in the clearing-house of the stock exchange?
A. Yes.
Q. Do you know whose signature that is to the card at the bottom, Schwartz, Dupee & Company?
A. Yes; that is Hayman, the stock-book keeper's signature.
Q. Will you explain what is the method of substitutions on the board?

Judge McConnell: We object to the incompetency and irrelevancy of the testimony.
Mr. Davis: I think I will withdraw that question then. I will have that card marked for identification, Complainants' Exhibit 6.

Q. Mr. Hayman is the stock-book keeper of Schwartz, Dupee & Company?
A. Yes, sir.
Q. Whose duty was it to sign these cards in the office of Schwartz, Dupee & Company?
A. The stock-book keeper's. I did at times, but he generally did it.

Cross-examination waived.

June 8, 1897.

117 *Testimony of H. F. Billings (Recalled).*

Mr. H. F. Billings recalled for direct examination by Mr. Davis.

Q. Mr. Billings, I hand you a card dated August 3, 1896, purporting to be signed with a stamp or typewriter, Jamieson & Co., and ask you if you recognize the signature there?
A. It is the signature—I recognize the writing as our clearing-house clerk's, I should say.
Q. That card was filled out by your clearing-house clerk?
A. I should say so.
Q. And the stamp, Jamieson & Co., is the impression of the stamp used in your office?
A. Very much, yes, sir; he probably did it.
Q. Goes for the signature of the firm, does it not?
A. Yes.

Mr. Davis: I ask to have this marked for identification, Complainants' Exhibit 7.

Adjourned to Saturday, June 19, 1897, at 2 o'clock p. m.

JUNE 30, 1897.

Met pursuant to adjournment.
Present as before.

Mr. DAVIS: We offer this stipulation in evidence, which is as follows:

EXHIBIT 7.

Statement.

On the 16th day of July, 1896, at 11.19 a. m., Schwartz, Dupee & Company received the following order from H. Clews & Company, by telegram:

"Sell 500 Diamond Match at 220½ for ac."
(Signed) "H. CLEWS & CO."

On the same day, at 11.35 a. m., Schwartz, Dupee & Company telegraphed Henry Clews & Co., as follows:

"Sold 500 Diamond Match at 221½ for the account."
(Signed) "SCHWARTZ, DUPEE & CO."

On the 20th day of July, 1896, at 9 23 a. m., Schwartz, Dupee & Company received telegram reading as follows:

"Sell 200 Diamond Match at 221 for the account at opening of market. They want put out at opening if possible, but it is good all day."
(Signed) "CLEWS."

On the same day, at 10.08 a. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

"Sold 200 Diamond Match 221½ for the account."
(Signed) "SCHWARTZ, DUPEE & CO."

118 On the 25th day of July, 1896, at 11.41 a. m., Clews telegraphed Schwartz, Dupee & Co., as follows:

"Change the Diamond Match over to August account at 2½ per cent. If you cannot do it let us know at once."
(Signed) "CLEWS."

And shortly after that, on the same day, at 11.48 a. m, Clews sent the following dispatch to Schwartz, Dupee & Co.:

"You sent us the difference this morning at 2½. At what difference can you do it now?"
(Signed) "HENRY CLEWS & CO."

On the same day, at 11.58 a. m., Clews telegraphed Schwartz, Dupee & Co., as follows:

"Change the 500 at two cents or better."
(Signed) "CLEWS."

On the same day, at 12.11 p. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

"Bought Diamond Match 227 for the account."
"Sold 500 229 account 2nd."
(Signed) "SCHWARTZ, DUPEE & CO."

On July 27, at 8.55 a. m., Clews telegraphed Schwartz, Dupee & Co. as follows:

"Change 200 more Diamond Match 2 per cent. or better."

(Signed) "CLEWS."

On the same day, at 10.53 a. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

"We changed the 200 Match at 2¼ difference. Will give you prices later."

(Signed) "SCHWARTZ, DUPEE & CO."

On the same day, at 10.55 a. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

"Bought 200 Match 226¾ account. Sold 200 2nd account, 229."

(Signed) "SCHWARTZ, DUPEE & CO."

Circuit Court of the United States, Northern District of Illinois.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL. } 24261.

Stipulation.

It is stipulated by and between the parties hereto that the foregoing are true copies of messages sent and received by and
119 between Clews & Company and Schwartz, Dupee & Company, and that they may be received in evidence with like force and effect as the original messages—the production of the originals being hereby waived.

It is further stipulated that the orders of Henry Clews & Company to Schwartz, Dupee & Company contained in said messages were, as a matter of fact, executed as set forth in the aforesaid messages from Schwartz, Dupee & Company on the Chicago stock exchange.

Dated June —, 1897.

ESTABROOK & DAVIS,
Solicitors for Complainants.
TENNEY, McCONNELL & COFFEEN,
Solicitors for Defendants.

Testimony of Walter Comstock (Recalled.)

WALTER COMSTOCK recalled for direct examination by Mr. Davis:

Q. Mr. Comstock, in the telegrams from Clews & Company, dated July 25th, to Schwartz, Dupee & Company, is the following: "Change the 500 at two cents or better;" taking that in connection with the other telegrams, can you state what Schwartz, Dupee & Company did under that order?

A. On that order?

Q. Yes; just explain the transaction.

A. Well, that "to change" means to buy for the——

Judge McCONNELL: He asked you what they did.

A. We bought 500 for the July account, which was the first account, and sold 500 for the second account.

Q. Which was what account?

A. The August account.

Q. And under the telegrams of July 27th, at 8.55 a. m., as follows: "Change 200 more Diamond Match two per cent. or better." Will you state what Schwartz, Dupee & Company did in executing that?

A. Bought 200 for the July account, and sold 200 for the August account.

Q. How much had you sold for Henry Clews & Company for the July account?

A. 700 shares.

Q. So that when you bought 500 and the 200 for the July account, that balanced the sales which you had made for the July account for Henry Clews & Company?

A. Yes.

Q. And left you with 700 shares sold for Clews & Company for the August account?

A. Yes, sir.

Q. On the 3d day of August, 1896, did Schwartz, Dupee & Company receive from the Chicago Stock Exchange clearing department a clearing-house sheet, showing——

120 Judge McConnell: I object; I suggest that you don't make it——

Q. A clearing-house sheet purporting to show——

Judge McConnell: It will show on its face what it purports to show.

Q. A clearing-house sheet, very well.

A. Yes, that is it.

Q. The brokers receive these sheets daily, do they not, from the clearing-house, or similar sheets?

A. Yes, sir.

Q. And in these sheets what is the custom as to writing out the full name of a firm or operator; they are usually abbreviated?

A. They are usually abbreviated, sometimes they are not. In this case they are all abbreviated except one.

Q. And "Schwartz" there means what, at the head of the sheet?

A. Schwartz, Dupee & Company.

Q. And the word "Jamieson," means what?

A. Jamieson & Company.

Q. This is the last clearing-house sheet received in 1896, prior to the opening of the exchange in November?

A. Yes, sir, that was the last one.

Q. And in these sheets is it customary to abbreviate the name of the stock traded in?

A. Yes, sir.

Q. And stock of the Diamond Match Company, is abbreviated, how?

A. Well, "Mtch." or "Match," one time one way and one another; Diamond Match it is called lots of times.

Q. Well, look at this sheet and see if you can tell from that what other abbreviation is.

A. Yes, I see all stocks on that sheet are abbreviated.

Q. Well, what does the "M" mean?

A. "M" means Diamond Match.

Mr. DAVIS: We offer this in evidence and ask that it be identified as Complainants' Exhibit 8, which is as follows:

COMPLAINANTS' EXHIBIT 8 TO TESTIMONY OF WALTER COMSTOCK.

CHICAGO STOCK EXCHANGE, CLEARING DEPARTMENT,
CHICAGO, *Aug.* 3, 1896.

Schwartz, D. & Co.:

We have settled all trades on your sheet this day, with the following exceptions, which have been substituted:

Bought.	Sold.	Stock.	Price.	Substitution.
	50	W. Chgo.	103¾	Wilson & S.
	150	" "	103¾	Wasmansdorff.
	1150	Match	222	Jamieson & Co.
	100	Bisc.	92	Breese & Co.
	550	"	92	Spencer.

121 Q. Mr. Comstock, on this clearing-house sheet appears on line 3, the following: "Sold 1,150 Match 222 Jamieson;" will you state what that 1,150 included?

A. What it included?

Q. Yes.

A. Well, it included the 700 Match sold for Clews & Company and 450 more for other clients.

Cross-examination waived.

Signature of witness waived.

It is stipulated that the residence and citizenship of the parties complainant- and defendants are as alleged in the bill.

JUNE 30, 1897.

Testimony of Joseph R. Wilkins.

JOSEPH R. WILKINS, a witness called on behalf of complainants, being first duly sworn, testified as follows:

Direct examination by Mr. ESTABROOK:

Q. You may state your name and occupation.
A. Joseph R. Wilkins, secretary and chairman of the Chicago stock exchange, also manager of the clearing-house.
Q. What clearing-house?
A. Clearing-house of the Chicago stock exchange.
Q. How long have you occupied those positions?
A. Occupied the position of chairman ever since the exchange started; secretaryship about eight or nine years, and manager of the clearing-house, ever since it was started, some five years ago.
Q. You were, then, occupying these positions during July and August, last year?
A. Yes, sir.
Q. What is the Chicago stock exchange?
A. Well, it is a voluntary association of gentlemen for the purpose of doing business.
Q. What kind of business?
A. Stock and bond business.
Q. When you say stock and bond business——
A. Trading in stocks and bonds and all other collaterals that are listed on the exchange.
Q. Buying and selling stocks and bonds and securities?
A. Yes, sir.
Q. Where are such stocks and bonds and securities bought and sold, that is to say, locally?
A. You mean in what part of the exchange?
Q. No, sir, in what building?
A. In the stock-exchange room.
122 Q. Owned and controlled by the association?
A. The room is not owned by them.
Q. Isn't the building owned by the——
A. The building is owned by Peck.
Q. It is at least controlled by them?
A. Yes, sir.
Q. Leased by them?
A. Yes, sir.
Q. And the building itself here in Chicago, is known as the stock-exchange building?
A. Yes, sir.
Q. Describe to the master the mode of buying and selling these various securities and commodities on the exchange.
A. Well, there is what we call an official call which takes place at ten o'clock, at that time I call off what is known as the official printed list of securities, stocks and bonds, parties who desire to make quotations make bids on them or take offers, if they have

them for sale; anybody that wants to buy bids, anybody that wants to sell, sells. During that call all the sales that are made are entered by the clerk, who sits alongside of me; that call ends when they get through—and then they go into what is known as the irregular call which lasts until half past one; at that time I make what is known as the clearing-house prices, which are the closing prices for the clearing-house that day, or in other words, the settlement prices, and at two o'clock the board adjourns.

Q. You do not, as I understand it, deal in all stocks and bonds?

A. No, sir.

Q. But, as I understand it, only such as are listed?

A. Yes, sir.

Q. On the exchange?

A. Yes, sir.

Q. Are those the ones you referred to as listed in the official call?

A. Yes, sir, they are called every day at 10 o'clock.

Q. I will ask you if Diamond Match stock is and was, in July and August, of 1896, one of the stocks listed on the exchange?

A. It was.

Q. The prices or market value of these stocks, then, as I understand it, are determined by practically an auction sale?

A. Yes, sir.

Q. In which you act as auctioneer?

A. Yes, sir; that is, we don't call it so on the exchange. For instance, if I would call Diamond Match, the judge would say, I will sell 2,500 shares at 222; his honor would say, I will give 220 for 500 shares; the judge would say, I will sell 500 at 221 and a quarter; his honor would say I will give 220 and a quarter; the judge might go down to 221 and a half, and his honor might come up to 221 and a quarter, and if they didn't come together it would be passed, no sale. If they came together I would say, Sold, 500, the judge to his honor, and it would be put on
123 record. Unless you come together, the stock is passed, somebody else comes in and makes an offer which is accepted.

Q. Now, whenever these biddings between members result in a sale, what memorandum or what notification is made of that?

A. Entered on the record books.

Q. Is it also entered on a blackboard?

A. Yes, sir; not the names.

Q. Not the names, but the fact?

A. 500 shares Diamond Match, at such a price, is put on the board.

Q. The number of shares sold of a particular stock, and the price, would be at once posted up in plain sight of the members?

A. Yes, sir.

Q. You say that only members of the exchange are permitted to deal on the floor of the exchange?

A. Permitted on the floor.

Q. Then all these transactions of buying and selling are between and among actual members of the exchange?

A. Yes, sir.
Q. And by and among no one else?
A. No.
Q. Then a stranger, even though a resident of Chicago, wouldn't be permitted to go in there and bid on stocks or to offer for sale any stocks?
A. No, sir.
Q. Except as he did it through a member of the exchange?
A. A stranger might go into what we call the strangers' place, which is outside of the railing which is on the floor. As you may know, if you have ever been there, there is a railing put around the front windows of the room, and any person who gets a card from a member, is entitled to go behind that railing.
Q. Simply as a spectator?
A. Yes, but he could call you to that railing and give you an order, and you could go back and execute it.
—. Would his name be known in the transaction on the floor of the exchange?
A. Not at all, wouldn't be recognized.
Q. So the broker through whom he deals wouldn't even notify the exchange or the party with whom he deals of his principal?
A. No.
Q. Are you acquainted with the rules, regulations, customs and methods of buying and selling on the Chicago stock exchange?
A. Yes, sir.
Q. And were in July and August of last year?
A. Yes, sir.
Q. I will ask you if the firm of Schwartz, Dupee & Company were, during those months, members of the Chicago stock exchange?
A. They were, sir.
Q. Was Jamieson & Company members of the Chicago stock exchange?
A. Yes, sir. When I say Schwartz, Dupee & Company were members, it don't mean that all the members of the firm neces-
124 sarily have to be members of the exchange. A member of a firm can be a member of the exchange and his firm is responsible for his acts on the exchange, therefore the firm virtually become members.
Q. Assuming, Mr. Wilkins, that on the 16th day of July, 1896, at 11.19 a. m., a dispatch is sent from a party in New York to a broker in Chicago, a member of the Chicago stock exchange, in these words: "Sell 500 Diamond Match at 220 and a half for account." Please explain to the master how you would interpret that order according to the rules, customs and methods of the exchange?

Judge McConnell: We object, upon the ground that the witness isn't called upon to interpret the dispatch sent from New York to another firm here in Chicago. You might ask him how to interpret an order of that kind if he received one on the exchange.

A. Only be one way to interpret it, that a person who had sent an order to a broker to sell 500 shares of Diamond Match for the

account, the broker would come on the floor, unless it was limited as to price—he would come on the floor of the exchange and try to sell 500 shares Match at 220 and a half or better, for the account, which would be July account if it was sent on the 16th.

Q. What do you mean by the account?

A. It means 500 shares of stock which is to be delivered and paid for and taken at the end of July; the delivery day for July is the last day of the month—or for any account is the last day of the month.

Q. Then the technical meaning of the word "account" is future delivery, in effect?

A. Yes, sir.

Q. I mean for the same month.

A. Yes, sir; for the month in which it is sold.

Q. So that the word "account" really means the account day of that month?

A. Yes, sir.

Q. Therefore, as I understand it, an order to sell stock for account on any particular month, means the account day of that particular month?

A. Yes, sir, except—I will have to go into an explanation. We will use the same month, for instance, you say it was the 16th when this transaction was made?

Q. Yes.

A. As I have stated, that means for delivery on the delivery day of that account, which is the last day of July, but on the 25th day of July the rules of the exchange permit the trading in what is known as the second account, which would be August in that case; that is done for the purpose of allowing men who desire to have turned, which was the case in this case from one month to another, have three or four days in which to do it, so that from the 25th day of any month up to the day before delivery day, which is the
125 day before the end of the month, I call two accounts, first account and second account. The first account is the account of that present month, which in that case would be July; the second account would have been the next account, which would have been August; then on the day before the last day of the month that stops and you go right on to the one account, which is August, of course, the following.

Q. You have in a measure anticipated my second question.

A. That I did merely to explain why there might appear to be two accounts in one month.

Q. These changes or transfers take place then, at what time in the month?

A. Any time after the 25th.

Q. Any time after the 25th, between that time and the account day?

A. And the last day.

Q. The account day of any month is the last day of that month?

A. That is the delivery day. Today is the delivery day of this account.

Q. Assuming, Mr. Wilkins, that on the 25th day of July, 1896, at 11.41 a. m., a telegraphic order is received from a party in New York by a broker in Chicago, member of the stock exchange, in these words: "Change the Diamond Match over to August account at two and a half per cent.; if you cannot do it, let us know at once." Please explain to the master what is meant there by the two and a half per cent., according to the rules and customs and nomenclature of the stock exchange?

Judge McConnell: Objected to.

A. It would mean that the 500 shares of stock which they had sold for their July account they did not wish to deliver on the last day of the month, therefore they went in and bought it in for one party and sold it out again for the August account, keeping themselves short the same amount of stock and making that difference, which they would, or at least what they wanted to make, two and a half—what they would make, I don't know.

Q. What is the two and a half per cent.?

A. Two dollars and a half a share, $250 on every 100 shares of stock for changing, for carrying the stock for another broker for another month.

Q. That would be compensation or commission?

A. Interest.

Q. It is the compensation or brokerage of the——

A. Hardly called brokerage.

Q. Or commission of the broker?

A. It is what one party who has 500 shares of stock—one broker who has 500 shares of stock that he is carrying for a customer and that customer is not prepared to take it up and he is perfectly willing to pay whatever anybody else, who is on the other side of the market will do it for, for carrying it for thirty days.

126 Q. Supposing, Mr. Wilkins, that a sale of stock is made on the exchange on the 16th day of July, on account; the person who purchases that is known at that time to the officers of the exchange, is he?

A. Yes, sir; you mean if it is made publicly on the exchange?

Q. I mean if it is made on the floor of the exchange?

A. Yes, sir.

Q. Would that person necessarily be the purchaser of that stock or responsible purchaser of that stock on the account day of that month?

Judge McConnell: I object to that especially because it involves an expression of a legal opinion; and I stand on that objection.

The Master: Let it go in subject to the objection.

A. No, sir.

Q. All sales or purchases of account are made through the clearing-house as I understand it, to which you have referred?

A. All trades made for the account must go through the clearing-house.

Q. That clearing-house is an adjunct and part of the exchange, is it?

A. Yes, sir.

Mr. ESTABROOK: I offer in evidence the clearing-house rules of the Chicago stock exchange, identified as Complainants' Exhibit 9.

Q. Those are the——

A. Yes, sir.

Judge MCCONNELL: I object to the introduction of the clearing-house rules.

The MASTER: They may be admitted subject to the objection.

Q. Were these rules, Mr. Wilkins, in force in the month of July and August, of 1896?

A. They were, sir.

Q. Calling your attention to section 3 of the clearing-house rules, I will ask you to state what blanks are referred to as being furnished by the manager?

Judge MCCONNELL: Objected to on the ground that the rule explains itself.

A. Blank referred to is that clearing-house sheet that you have in your hand.

Mr. ESTABROOK: Marked for identification as Exhibit 10. I offer this blank in evidence.

Judge MCCONNELL: I object.

The MASTER: It is admitted subject to objection.

Q. The names appearing at the left of the column in this blank, are those of members of the clearing-house?

A. Yes, sir.

127 Q. And members of the exchange?

A. Naturally, they have to be that.

Q. The names appearing at the top, or rather the initials, "WCStRR" and "NYBisCo" what do those indicate?

A. Stocks that are traded in, in the clearing-house.

Q. I will ask you if only such stocks as are indicated at the top of the page are those permitted to be traded in, in the clearing-house?

A. Yes, sir; stocks are added from time to time, and they are put on the sheet.

Q. I will ask you if only those whose names appear at the left of the page are permitted to trade in the clearing-house?

A. Any member of the exchange can trade in the clearing-house that wants to. Those sheets are gotten up with those names printed in because they happen to be those of the men who trade regularly in the clearing-house, but any member of the exchange has a perfect right to trade in the clearing-house.

Q. When these sheets are made up what becomes of them?

A. They are kept till the end of the month when the account is

settled, when they are destroyed, but a summary is kept of every day; that has been kept from the time the clearing-house was started up to the present time.

Q. Have you the original sheets made out for the 25th day of July, 1896?

A. The original clearing-house sheets?

Q. Yes, sir.

A. No, sir.

Q. For the 27th day of July, 1896?

A. No, sir; I have no sheets except the present month,—the last month. As I said, everything is destroyed at the end of every month after everything is settled up.

Q. But they still retain summaries?

A. A summary of every day's work.

Q. In what shape is that summary?

A. Well, it is made out, really, a summary of everybody's transactions on a certain day, just how many shares of one stock they are long, how many shares of another stock they are short, how much money they had up in the clearing-house on that day?

Q. Is a summary statement taken from their sheet given to the members at the close of each day, or each day?

A. A summary of their sheet?

Q. Yes, sir.

A. You may receive what we call a substitute slip, telling who they have got stock bought or sold to, which of course is virtually the same thing, but they don't get a summary of the sheet.

Q. Isn't that made up from the sheet?

A. Oh, yes, that is made up from this.

Q. Showing you Exhibit 8, I will ask you from what
128 source the information contained in it is derived?

A. This is a copy. From the summary, showing just how they stood on that day in every stock.

Q. Is there not, Mr. Wilkins, in addition to the statement as to how they stood on that day, also given the person who was substituted in their contract?

A. There is in that statement.

Q. That, however, is not made up from your clearing-house sheet?

A. Certainly, that is the last thing made up, the clearing-house sheets are balanced; first, every man's sheet is taken, there may be fifty different men in the clearing-house, those sheets are all taken in, and the stock and money is balanced every day at noon, or whatever time the clerks get through, then the summary is made up of John Jones' sheet, 500 Match short, Peter Smith long 500 Match; that summary is then made up and those slips are made from the summary.

Q. I will ask you if your authority to make these substitutions of names of purchasers is not derived under section 5 of the rules to which I have referred.

Judge McConnell: Objection; calling for an opinion and conclusion.

A. It is, sir.

Q. Please explain to the master and myself the working of that rule.

A. It simply says, I can say what it says myself, so as to have what may follow come in line with it. It says that the manager shall borrow or loan stock; it means to say that if you are a member of the stock exchange put in a clearing-house sheet on one morning, and in balancing that sheet you are 500 shares—you show that you are 500 shares of Diamond Match long, you put that sheet in, and by putting that in with the sheet in the condition it is, it is taken as authority for the manager of the clearing-house to borrow that stock for you from somebody else, that is what the clearing-house is for, to save the broker the bother of doing that business himself. The Judge might be another member of the exchange, he might put in a sheet showing that he was short 500 shares of Diamond Match, in other words, just the opposite to what you would be, or there might be five different brokers on the floor, each putting in a sheet 100 shares short. If you are long, the manager of the clearing-house through his clerks takes every sheet, the sheets must all balance or else the business stops and don't go on until it does balance, so that the stock and differences must balance every day before the summary is made up; therefore, if you are 500 shares of stock long on Diamond Match, there must be somebody in that clearing-house who is 500 shares of stock short, or the sheets wouldn't balance, therefore, the manager of the clearing-house borrows
129 from you, who may be long 500 to supply the Judge, if he is short 500, or to supply five other men who are short 100 each, and in doing that the summary is made up, and they get that notice which you have just referred to.

Q. That, in effect, Mr. Wilkins, results, does it not, in the substitution from time to time, or from day to day, as the case may be, of a different purchaser or buyer of stock?

A. It may or it may not.

Q. Again calling your attention to Exhibit 8, I will ask you to translate the third line.

A. Well, the third line means that Schwartz, Dupee & Company on that day were short 1,150 shares of Match which they had with Mr. Jamieson, which they had virtually loaned Mr. Jamieson; Schwartz & Dupee, according to that, were short 1,150 shares at 222, Mr. Jamieson by his substitution sheet would appear just the opposite.

Q. 1,150 shares of what?

A. Diamond Match.

Q. That was the only match stock listed, was it not?

A. Yes, sir.

Q. On the second day of August, 1896, a sheet such as this might have had, instead of the name of Jamieson & Company, the name of any other broker who happened to be long that number of shares?

A. And Schwartz & Dupee were short that number.

The MASTER: Will you kindly explain fully the operations of the clearing-house, which you have partially done already.

A. I suppose I can better do that by taking this same stock, Diamond Match, and taking these two parties' names, Mr. Jamieson and Mr. Schwartz. We will take yesterday, Mr. Schwartz might come on the floor and offer 500 shares of Diamond Match at 222, account; Jamieson might take it; now that would be a sale at 222. As I have stated, I go into the chair at half past one and make what is called settlement prices, those prices are made for the purpose of making a price at which all stock which goes into the clearing-house the first thing the next morning must be settled at, so that if this 500 shares of stock was bought and sold at 222 and the clearing-house price of that same day at half past one, which would be for this morning, you understand, for settlement of yesterday's trades, but to go in the first thing this morning was 221, Jamieson, who had bought it for 222, would put his sheet in 500 from Schwartz & Dupee, and put in a certified check for $500, due to the settlement price, Schwartz & Dupee would put in their draft for $500, and put in a draft to get five hundred out, because they are taking it from the clearing-house from somebody at a point cheaper than they actually sold it at, therefore they get that $500 out of the clearing-house by a draft which they put in, and they have then got their contract at 221 instead of 222. That is the way, both stock and money; the man whom it is against in the clearing-house puts in a certified check; the man in whose favor it is, draws a draft out of the clearing-house; that balances the money, and as I have stated, the stock must balance by some man being long just as much as the other man is short.

Q. When you say a sale of yesterday on account, you mean to be settled for today, being the last of the month?

A. It would be in this case. But I am speaking now as though we were in the middle of the month. At the same time when any person puts in a sheet in the clearing-house of 500 shares, they would be obliged to put in a margin, certified check for ten points, that is, 500 shares would be $5,000, that margin remains in the clearing-house until that stock is actually taken up by the party who has it there; that has nothing to do with the difference every day. That margin stays right there for that particular 500 shares of stock, or whatever it may be, and he simply puts in or takes out the man who puts in his certified check today for a difference of 50¢ may draw it out the next day by a change in the settlement price at the end of every day.

The MASTER: But until the transaction is ended, the margin remains?

A. The margin stays until the transaction is actually ended. About the substitution, the only thing further I can say—when a sheet is put in showing 500 shares of stock long by Jamieson & Company, there must be a sheet showing 500 shares of stock short by somebody—either one sheet of 500 or five sheets of 100 each, or ten sheets of 50 each.

The MASTER: That is simply because when a trade is made there are two parties to it?

A. Yes; and at the end of the day when the clerks get through making up their balances, in order to get up the substitution notices those sheets must balance both as to money and as to stocks.

Q. Presuming, Mr. Wilkins, that on a particular date a broker had sold 700 shares of stock for the account, and that on that same day ten other brokers have bought stock aggregating 50 shares each to 100 shares each, how would you make out the substitution sheet of that date?

A. That would depend entirely on circumstances. As a rule, the clearing-house endeavors to arrange things for the best advantage of the men in it. For instance, if there is one man has 700 shares of stock and one other man has the same amount of 700, in all probability the clerks would give those two men each the 700
131 shares for the sake of convenience, to each of them; there is no absolute rule which compels me as manager to give either the 700 shares to a man or seven 100.

Q. But as manager would you have authority, under this rule, to put down 50 shares to one and 650 to another?

A. Yes, sir.

Q. Or 100 to one, 200 to another and 400 to still another?

A. Yes, sir.

Q. So that you could substitute as the purchaser of that share whomsoever was short on that to any amount?

A. Yes, sir; so long as it balances.

Q. That would be brought under this rule?

A. Yes, sir; that is the way we take it under that rule, which authorizes to borrow and loan stock.

Q. Is it not then in substance the rule which you claim authorizes you to substitute for the original purchaser any one on that stock exchange who is willing to become a purchaser, who, as a matter of fact, is long?

A. Not anybody who is willing, he must have become a purchaser and be in the clearing-house.

Q. Purchaser from some source?

A. No; must have been in the clearing-house. I couldn't substitute anybody who is not in the clearing-house, of course.

Q. You spoke, Mr. Wilkins, of yourself fixing the settling price each day for the account. Do you mean by that that you arbitrarily set a price?

A. No; I get up at half past one o'clock and I call the different stocks that are in the clearing-house, and only those stocks at that time. Diamond Match is called, 220 is bid for the account; it is offered at 222; 220½ is bid, and it is offered at 221½, 221 is bid, and it is offered at a quarter, and the last bid price before I ring the bell or put the mallet down is the price fixed for the settlement price of that day.

Q. Then that is fixed by auction, the same as the other prices?

A. Yes, sir.

Q. You spoke also of margining sales and purchases; explain to the master what you mean by that.

A. Every stock that goes in the clearing-house, Diamond Match, take for instance, any man who puts a sheet in tomorrow morning with 100 shares would have to put a certified check in of $1,000; that is, unless his sheet balanced. If he had 100 shares of stock bought and 100 sold, and simply the difference to draw out or put in, he wouldn't put any margin in because he wouldn't have any stock in the clearing-house, but if there is anything open on his sheet he would put in a thousand for every hundred shares of stock.

Q. Whoever purchases or sells stock, then, for the account is required to put up 10 per cent. of the par value of the stock as margin?

A. Yes, sir.

132 Judge McCONNELL: If a broker or a member of the stock exchange sold 100 shares and bought 100 shares, bought for one customer and sold for the other he wouldn't put up any margin?

A. No, sir; of course the clearing-house wouldn't know anything about the customers; simply know that his sheet was balanced.

Q. They don't deal with customers at all?

A. No, sir.

Q. I will ask you if there is anything in the customs or rules of the exchange which limits the liability of a member to the amount that he has deposited as margins.

Judge McCONNELL: Objected to.

The MASTER: I think he may answer.

Judge McCONNELL: Calling for an opinion that only the court ought to render.

A. Do you mean by that question if the amount of margins which the broker had up in the clearing-house was not sufficient to cover the loss sustained the party on the other side would he have a claim against that broker for the balance?

Q. Yes.

A. The rules say that all debts between members shall be binding.

Q. After these substitution sheets, as you term them, are made from the clearing-house sheet and given to the various parties, I will ask you if there is any other document made out and signed by the parties to the contract, in pursuance of this substitution.

A. Yes, sir; there is.

Q. What?

A. What is known as trading cards.

Q. Calling your attention to Exhibits "6" and "7," I will ask you if these are the trading cards to which you refer.

A. Yes, sir.

Mr. ESTABROOK: I offer in evidence, may it please the court, Exhibits "6" and "7," which are as follows.

EXHIBIT 6 TO TESTIMONY OF JOSEPH R. WILKINS.

EXHIBIT 6.

CHICAGO, *Aug.* 3, 1896.

M. Jamieson & Co.:

We hereby confirm sales made by us for the account today under the rules of the Chicago stock exchange, also substitution trades.

Am't.	Kind of property.	Price.
	Substitution trades—Sold.	
11.50	Match.	222
	Difference { Collect	287 56
	Pay.	

(Signed) SCHWARTZ, D. & CO.

133 EXHIBIT 7 TO TESTIMONY OF JOSEPH R. WILKINS.

EXHIBIT 7.

CHICAGO, *Aug.* 3, 1896.

M. Schwartz:

We hereby confirm purchases made by us for the account today, under the rules of the Chicago stock exchange, also substitution trades.

Am't.	Kind of property.	Price.
	Substitution trades—Bought.	
11.50	D. Match.	222
	Difference { Collect	
	Pay	287 50

(Signed) JAMIESON & CO.

Q. Translate Exhibit 6.

A. The only way I can translate it is by simply reading it, says, they hereby confirm sales made by you for the amount of today under the rules of the Chicago stock exchange and also substitution; that card would show that they had no sales and they accepted the substitution which I had given them for 1,150 shares of Match at 222 and they collected $287.50.

Q. Who did?

A. Schwartz & Dupee.

Q. Then I will ask you to translate Exhibit 7?

A. That is exactly the same as Exhibit 6, except that they paid $287.50. At least, this is Jamieson & Co., that is, Jamieson & Com-

pany say that they have bought 1,150 shares of stock at 222 and paid $287.50; Schwartz, Dupee & Company say that they have sold 1,150 shares of Match at 222 and collected $287.50; that balances the stock and balances the money.

Q. Who were these cards delivered to?

A. To the clearing-house, they were put in the night before.

Q By whom?

A. By the parties—by the opposite party. For instance, Schwartz would put Jamieson's card in, and Jamieson put Schwartz's card in, and the sheets that come in the next morning must confirm these cards. In other words they are simply copies of one another, the cards and the sheets.

Q. Calling your attention to the answer of the governing committee filed in this case, in which it states that there is on deposit a trust fund by Jamieson and also by Schwartz, Dupee & Company of $7,000 each to secure the performance of this contract of August 3, I will ask you if, to your knowledge, you know that is true?

A. It is, sir.

134 Q. It is?

A. Yes, sir.

Q. Was the stock exchange open on August 3d?

A. Yes, sir.

Q. Was it on August 4th?

A. No, sir.

Q. How long was it closed?

A. It opened on the 5th day of November.

Q. Of 1896?

A. Yes, sir.

Q. Was it closed continuously without even an occasional opening, between August 5 and November 5?

A. It was; that is, never opened for business.

Q. Do you know why it was closed?

A. It was closed by authority of the governing committee, that is all. Of course, I knew about it. I am merely the secretary of that body.

Q. Is Mr. Jamieson a member of that committee?

A. He was at that time, he is not now.

Q. Was he at that time?

A. Yes, sir. He was president of the exchange at that time.

Q. Do you know whether or not any objection was made by Mr. Jamieson to the closing of this exchange at that time?

A. That would be telling part of the history of the meeting of the stock exchange, that I don't know that I, as secretary have any right to do unless his honor tells me to.

The MASTER: I think the question is a proper one.

A. Mr. Jamieson made no objection to the closing of the stock exchange.

Q. I will ask you if it was closed, whether the vote on it was unanimous?

Judge MCCONNELL: We object to that upon the ground that if there is a rule——

Mr. ESTABROOK: Well, I don't care how the others voted. Question withdrawn.

A. At the time of its being closed, on the morning of August 4, was there anything in the resolution closing it, providing for its reopening at any particular date?

Judge MCCONNELL: I object on the ground that it should be shown by the best evidence of it, which is the record?

Q. Have you the resolution?
A. Of, closing? No, sir; I have no minutes of the governing committee here. If you say I should tell what the resolution was, no trouble for me to do it, I don't require the minutes to do that—that is, for the sense of it.
Q. Was the resolution made a matter of record?
A. Certainly.
Q. If they insist upon the best evidence you can get it?

Judge MCCONNELL: I won't insist upon it.

135 A. Closed during the pleasure of the governing committee, or words to that effect. Meant to be closed until the governing committee said it was to be open again. I hand you a copy of the resolution.

Mr. ESTABROOK: This resolution is introduced in evidence as Complainants' Exhibit 11, which is as follows:
"Resolved, That the exchange adjourn on Tuesday morning 4th inst., and remain closed pending further action by this committee."

Q. Do you know, Mr. Wilkins, what the opening of the market was on the stock exchange, on its reopening in November, 1896?
A. I can tell by looking at the official sheet.
Q. Have you the official sheet with you?
A. Yes, sir.
Q. Please produce it.

Judge MCCONNELL: Objected to as irrelevant.
Mr. ESTABROOK: I offer in evidence the official record of the sales of Diamond Match, on November 5, 1896, on the reopening of the exchange as Exhibit 12.
Judge MCCONNELL: Objected to as immaterial.
The MASTER: Admitted subject to the objection.
It is stipulated that so much of the exhibit may be read into the record as pertains to the purchase and sale of Diamond Match stock only, subject to objection, and the remainder of the exhibit omitted.
The WITNESS: 30 shares at the first call, at 130, 1,013 after calls at 130, and 35 at 130⅛, and the clearing-house settlement price on that day was 129½. (Reading from Exhibit 12.) There is one thing, that all this stock and all these prices that I have given you, was regular stock, not account stock; there was no account stock sold that day. Whether that makes any difference to your case or not, I don't know.

Q. For delivery at the end of that particular month?
A. Yes.
Q. I am talking about cash sales?
A. That is just as I have given it to you.
Q. Have you got the official record of sales for the next day?
A. No, I have not.
Q. Calling your attention to Exhibit A attached to the answer of certain defendants, so labeled, represented by Mr. Dawes, I will ask you whether or not those are the rules and by-laws and constitution of the stock exchange, in force in July and August, 1896?
A. Yes, sir.
Q. Calling your attention to section 12 of the clearing-house rules, I will ask you if that as printed was not in force at that time?
A. At that time, yes, sir.
136 Q. So that the pencil erasure there——
A. Is simply something that has been done since.

Mr. ESTABROOK: I offer these in evidence as Exhibit 13. It is stipulated that each side may read into the record such of the constitution and by-laws and rules as it may see fit, subject to all objections as to competency and relevancy.

Mr. ESTABROOK: Do you object to these as incompetent, not having been shown to have been regularly passed, or anything of that kind?

Judge MCCONNELL: No formal question is raised on the part of the defendants as to the proof of record or the mode of passage—mode of adoption.

Cross-examination waived.

Mr. ESTABROOK: Of the constitution, by laws and rules of the Chicago stock exchange, we desire copied into the record the following:

Constitution and By-Laws of Chicago Stock Exchange to Testimony of Joseph R. Wilkins.

ARTICLE I.

Title of the Association.

The title of this association shall be "The Chicago stock exchange."

ARTICLE II.

Government of the Exchange.

The whole government of the exchange shall be vested in a governing committee composed of the president and twenty-four members, elected in the manner hereinafter provided.

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ARTICLE VI.

Duties of President and Vice-President.

It shall be the duty of the president to see that the several provisions of the constitution and by-laws are enforced, and to have a general care of the interests of the exchange. He may preside over the exchange whenever he may elect so to do, and he shall be president of the governing committee.

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137 ARTICLE XIII.

Place of Business—Partnerships and Dissolutions.

SECTION 1. Every member must have in the vicinity of the exchange, a place of business other than the exchange, where comparisons may be made at any time during the day, after the expiration of one hour from the time of the transaction, and where notices may be served; and it shall be the duty of every member to keep filed with the secretary a written notice designating such place of business, and similarly to give notice of any change thereof. Any member neglecting to comply with this rule may be considered in default on his contracts, and such contracts may be closed out according to article XVII of the by-laws.

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ARTICLE XV.

Suspended Members—Readmissions—Claims of Creditors, etc.

SECTION 1. Any member who fails to comply with his contracts, or who becomes insolvent, shall be suspended until he has settled with his creditors. Such member shall immediately inform the president in writing that he is unable to meet his engagements, and it shall be the duty of the presiding officer thereupon to give notice from the chair of the suspension of such member. The secretary shall record the failure *to* such member in a book kept for that purpose. In default of giving such information, the party, on application for readmission, shall not be entitled to a reference of his case to the committee on admissions unless two-thirds of the governing committee present shall vote in favor of such reference.

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ARTICLE XVII.

Fictitious Sales, Bids, and Offers.

SECTION 1. No fictitious sales shall be made. Any member contravening this section shall, upon conviction, be suspended by the governing committee.

SEC. 2. Any member who shall make fictitious or trifling bids or offers, or who shall offer to buy or sell any stock or security other than Government bonds, at a less variation than one-eighth of one per cent. shall, upon conviction, be subject to suspension, or such other penalty as the governing committee shall impose.

138 ARTICLE XVIII.

Payment and Deliveries in Certain Cases to be Simultaneous.

In all deliveries of stocks, bonds, etc., the party delivering shall have the right to require the purchase-money to be paid at the time and place of delivery.

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ARTICLE XXIX.

Any member of this exchange who is interested in, or associated with, or whose office is connected directly or indirectly by wire or other method or contrivance, with any organization, firm or individual engaged in the business of dealing in differences or quotations on the fluctuations in the market price of any commodity or security without a *bona fide* purchase or sale of said commodity or security in a regular market or exchange shall, on conviction thereof, be deemed to have committed an act or acts detrimental to the interest and welfare of the exchange.

BY-LAWS.

ARTICLE I.

Hours of Business.

SECTION 1. The exchange shall be open for the transaction of business upon every business day from 10 a. m. until 2 o'clock p. m.

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ARTICLE IV.

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No sale of securities shall be made on which a deposit shall be offered as the limit of liability.

Any member guilty of dealing, or offering to deal, with a person not a member, in the rooms of the exchange, shall be fined fifty dollars, without excuse or appeal, and for a repetition of the offense he shall be suspended for a term not exceeding sixty days.

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139 ARTICLE VII.

Hour for the Delivery of Securities—Payments.

SECTION 1. All deliveries of securities must be made between 11 a. m. and 1.30 o'clock p. m., or the buyer may demand that they shall lie over until the next day without interest, when they shall be delivered before 10.30 o'clock a. m., and when deliveries are not made by that time the contract may be closed under the rule after due notice to the defaulting party as provided in article XVII of the by-laws. Such notice must be given, however, not later than 10.45 o'clock a. m., and the contract must be closed without delay unless the time for so doing be extended by mutual consent. In all cases

certified checks on national or State banks must be given in payment of all securities delivered.

In the absence of any notice or agreement, the contract shall continue without interest until the following day, when the same rule shall apply. In every case of non-delivery, however, the party in default shall be liable, in addition, for the damages that may accrue.

SEC. 3. This rule shall apply to borrowed and loaned securities. When a sale has been made for cash after 1 o'clock p. m. the seller shall have until 2 p. m. to make his delivery.

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ARTICLE XVI.

Mutual Deposits on Contracts.

SECTION 1. In any contract either party may call at any time during the continuance of the same for a deposit of ten dollars per share upon the par value of the securities bought and sold; and whenever the market price of the securities shall change so as to reduce the margin of said deposit either way below the ten dollars, either party may call for a deposit sufficient to restore the margin to ten dollars, and this may be repeated as often as the margin may be so reduced. In all cases where deposits are called they shall be made within one banking hour from the time of such call.

SEC. 2. In case either party shall fail to comply with the demand for a deposit in accordance with the provisions of this article, the party calling, after having given due notice, may report the default to an officer of the exchange, who shall repurchase or resell the security forthwith in the exchange, and any difference that may accrue shall be paid over to the party entitled thereto. The notice above referred to shall be either personal or shall be left in writing at the office of the party to be notified or in case he has no office, then by public announcement whenever the exchange may be in session.

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ARTICLE XVII.

Default—Closing Contracts under the Rule.

Should any member neglect to fulfill his contract on the day it becomes due, the party or parties contracting with him shall, after giving notice as required by section 2 of the preceding article, employ an officer of the board to close the same forthwith in the exchange by purchase or sale as the case may require, unless the price of settlement has been agreed upon by the contracting parties. In case of a failure of a creditor to close the contract as above, the price shall be fixed by the price current at the time such contract ought to have been closed under the rule. In all cases where an officer may be directed to buy or sell securities under this rule, the name of the member defaulting, as well as that of the member giving the order shall be announced. No order for the purchase or sale of securities under this rule shall be executed unless made out

in writing over the signature of the party giving the order, who shall state the reason therefor; and it shall be the duty of the officer who executes the order to endorse thereon the name of the purchaser or seller, the price and the hour at which the contract is closed, and hand the same to the secretary of the board, who shall within twenty-four hours ascertain whether the party for whose account the order was given has paid the difference, if any, arising from the transaction; if not, the secretary shall report the default to the president. The duty devolved upon the officers of the exchange under this rule shall be performed without charge. No party shall be permitted to supply offers to buy or sell securities closed for his account under the rule; and when a contract is closed under this rule any action of the defaulter direct or indirect, by which the prompt fulfillment of such contract is delayed, hindered or evaded to the detriment of the other contracting party, shall subject the offending party to suspension for not less than thirty days in the discretion of the governing committee, by a vote of two-thirds of the members present at the meeting. When contracts are closed out under the rule, any member supplying the bid or offer, and not duly receiving or delivering the stock, as the case may be, renders himself liable to prosecution under this article. Should any stock thus sold not be delivered until the next day, the contract shall continue, but the defaulting party shall be
141 liable to pay such damage as may be assessed by the arbitration committee. The same rules as to notice, time and place that govern defaults in other contracts shall apply to borrowed securities, which on non-delivery or receipt, must be borrowed or loaned in open market, except in case of actual default in receiving or delivering after notice to close the loan; then the same are to be bought or sold, as the case may be, for account of the defaulter in the manner provided in this article.

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ARTICLE XXVIII.

No person other than a member shall have a right to file any claim against any member of the exchange.

Clearing-house Rules.

SECTION 1. Under the following regulations transactions may be made for "the account" in any securities listed for that purpose dealt in at the exchange.

SEC. 2. Deliveries of cash stock or transactions for "the account" shall be made on the last day of each month. Provided, however, should the last day of any month occur on a holiday or on a day when the exchange is closed for business, then in that case deliveries shall be made on the first business day preceding.

SEC. 3. All purchases and sales for "the account" shall be entered upon the blanks furnished by the manager, sealed for that purpose, and said blanks properly filled out, balanced, accompanied by a proof-sheet and signed, must be delivered to said mana-

ger before 9.45 a. m. It shall be the duty of the manager to compare and examine the statements rendered, and to report, should any errors be found, to the parties making such errors before 12 m., by written notice, which must be called for at the manager's office. Parties in error must at once proceed to adjust the same and correct their statements. All balances due from members, as shown by the statements, shall be paid by certified check drawn to the order of the bank design-ed for that purpose, and delivered to the manager before 10.15 a. m., the same day, except on Saturdays, when the balance must be paid before 9.45 a. m.

SEC. 4. On balances due to members, as shown by the statements, a draft for the amount payable to their own order, shall be drawn upon the bank designated for that purpose, and delivered to the manager before 10.20 a. m. (except on Saturday). The manager shall cause the said draft, if correct, to be accepted by said bank, and returned to the parties entitled thereto at the manager's office.

142 SEC. 5. *On* or before 9.45 a. m. parties who have not borrowed or loaned their stock balances for "the account" shall extend said balances on their statements at the closing bid price, designated as short or long, and shall request the manager in writing to borrow or loan said stock balances for their account and risk at the closing price. Notice that such loans have been made and the names of the parties thereto will be delivered at the manager's office on or before 2 p. m. Loans made by the manager are for one day only, unless renewed between members.

SEC. 6. Stock balances, as shown by the statements, rendered for cash settling days must be delivered and paid for at the closing bid price of the previous day, as per manager's notices, before 1.30 p. m. Provided, however, if satisfactory evidence is shown the clearing-house committee that the cash stock is on hand in New York, or in transit for Chicago, three days' grace will be given the seller to make the delivery with interest, failing in which the clearing-house committee shall cause to be purchased for account of delinquent said stock in whichever market in their judgment seems best; and the party so failing to deliver shall be held responsible for all loss or damage arising therefrom, but when a failure to receive or deliver occurs, nothing in these notifications shall be construed to relieve the last contracting parties to the transaction from the liabilities to each other.

SEC. 7. Whenever a member fails to pay the balance due on his statement by 10.15 a. m., (except on Saturday), the manager shall notify the presiding officer of the exchange, whose duty it shall be to forthwith cause the stock balances, as shown by the statement of the delinquent, to be bought in or sold out under the rules as the case may be, and assess the party in interest on the statement *pro rata*. In case any member owes an additional amount caused by errors, disputes or assessments, said amount shall be paid within one hour from the time of notification of the same, otherwise the party will be considered as having failed and be treated accordingly.

SEC. 8. Whenever a member is unable to meet his contracts or transactions made for "the account," he shall make a statement of his transactions, to be audited that day, and deliver it to the manager or presiding officer of the exchange.

SEC. 9. The manager, or any assistants employed by him in the manager's office are positively prohibited from receiving any securities or currency or any other evidences of value, except the checks and drafts hereinbefore mentioned in these rules.

SEC. 10. The same rule as to notice, time and place, that govern defaults in other contracts shall apply to transactions for "the account."

143 SEC. 11. Neither the exchange nor any of its members (except those making the errors), the manager, or any assistants employed by him, shall be responsible for any errors made in the statements to the manager, but the errors must be settled and adjusted at once between the members making said errors when notified by the manager to do so. The manager shall report any neglect or refusal to comply with these rules to the presiding officer of the exchange.

SEC. 12. The margin to be deposited on stock trading in clearing-house selling at $100 or over per share shall be $10 per share, and on all stocks selling under $100 per share the margin shall be $5 per share.

SEC. 13. Margins deposited on trades in the clearing-house shall be considered as a margin or as a part of the same under section 1 of article XVI of the by-laws of the stock exchange. All such margins to be deposited in the clearing-house.

SEC. 14. The clearing of trades and money is not completed until the trades and substitutions are all made and notice posted to that effect by the manager of the clearing-house.

SEC. 15. The brokers have the party they may trade with or party received from the clearing-house on the substitution of the day before, in case of any failures between the hours the sheets are put in the clearing-house, 9.45 a. m., and the time the notice is posted that the substitutions are ready for that day.

SEC. 16. In event of the announcement of failure of any member to meet his contract, all stock bought in or sold out for him as "account" stock shall be settled outside of the clearing-house, and only such stock as appear on the substitution sheet of the day of the failure shall be allowed to clear on the clearing-house sheet of the following morning.

SEC. 17. When any member fails to execute any contracts required of him by the clearing-house, the margin checks deposited by such member for the protection of other members contracting with him through the clearing-house, shall be held first for that special purpose, and after satisfying the claims of such members to the extent of the margin rule of the clearing-house, the balance, if any, shall be held for a period not exceeding ten days, as a trust fund for a *pro rata* distribution among other creditors, who are members of the Chicago stock exchange.

144 *Testimony of H. J. Davis.*

JUNE 30, 1897.

H. J. DAVIS, being first duly sworn, testified as follows:

On September 11, 1896, I delivered to Jamieson & Co. the letter of Schwartz, Dupee & Co., dated September 9, which has been introduced in evidence as Exhibit 2, also the letter of September 10, 1896, signed Henry Clews & Co., by Estabrook & Davis, which has been introduced in evidence as Exhibit 1. Said deliveries were made to Henry F. Billings at the office of Jamieson & Co. Mr. Billings received the letters and said that he would receive them; he read them and then remarked, "The transactions referred to were on the stock exchange." That was all he said. I then prepared a notice, of which the following is a copy, being the first advertisement of the sale of 700 shares of stock, and is offered as Exhibit 14:

EXHIBIT 14.

Estabrook & Davis, # 807 Chamber of Commerce building.

Sale of Diamond Match Stock.

Notice is hereby given that on Tuesday, the 15th day of September, 1896, at one o'clock p. m., at the judicial salesrooms of the Chicago real-estate board, No. 57 Dearborn St., in the city of Chicago, county of Cook and State of Illinois, the undersigned will offer for sale, and sell, at auction, to the highest bidder for cash, seven hundred (700) shares of the capital stock of the Diamond Match Company.

HENRY CLEWS & COMPANY,
By ESTABROOK & DAVIS,
Their Attorneys.

I sent that advertisement to every broker, and every banker who was a member of the stock exchange of Chicago, three or four days before the 15th of September, 1896.

Judge MCCONNELL: It is understood that this is subject to objection as to competency and relevancy.

I also caused to be inserted an advertisement, in the same language, in the Chicago Daily Bulletin, a legal paper of general circulation among bankers, brokers, and real-estate men, and lawyers in the city of Chicago. It was inserted three days. I know, as a matter of fact, that all the newspapers in the city also had notices of this advertised sale. On the 15th day of September, at the hour appointed for the sale, I attended, and there were, I should
145 think, over one hundred persons there, stock brokers, people who, from their conversation I saw were interested in that advertised sale. At that hour I adjourned the sale for one week, until the 22nd of September, at 1 o'clock p. m., and made a public

announcement of that adjournment. The adjournment was also noticed in all the Chicago newspapers, and was a matter of general notoriety through the notices which the newspapers gave. On the 21st day of September, in the morning, I mailed a notice of the adjournment to all the bankers and stock brokers in the city of Chicago, sent out, I think, about 300, I don't know the exact number, in the mail, through the regular course, a copy of which is produced as follows, marked Exhibit 15.

EXHIBIT 15.

Estabrook & Davis, # 807 Chamber of Commerce building.

Sale of Diamond Match Company Stock.

Notice is hereby given that the auction sale advertised for Tuesday, the 15th day of September, 1896, at one o'clock p. m., at the judicial salesrooms of the Chicago real-estate board, No. 57 Dearborn street, in the city of Chicago, county of Cook and State of Illinois, for the sale of seven hundred (700) shares of the capital stock of the Diamond Match Company, was adjourned until Tuesday, Sept. 22, 1896, at one o'clock p. m., at which time and at the same place, said stock will be sold to the highest bidder for cash.

HENRY CLEWS & CO.,
By ESTABROOK & DAVIS,
Their Attorneys.

On the 22d day of September, at one o'clock, at number 57 Dearborn street, in the judicial salesrooms of the Chicago real-estate board, I attended, with Mr. Conley, who had with him certificates for 700 shares of stock of the Diamond Match Company. I then announced publicly to the people present that I offered these certificates for sale to the highest bidder. There were present, in my judgment, from 75 to 100 people; the room was full, well filled. I asked for bids for the 700 shares of stock. I don't remember what the bids started at, but I think less than par. The bids were raised several times until I was bid by Mr. Gage, a stock broker, $130 per share; Mr. Barber, the president of the Diamond Match Company, was there, and made a bid for, I think, 200 shares at $135 per share. I told him I would not accept a bid for less than the whole 700 shares, unless he would furnish also a bid for the balance, so that the total amount, if bid in separate lots, would aggregate more than $130 for the whole. I received
146 no other bids for the whole of the stock. I waited several minutes, gave repeated warnings that it would be struck off and sold at the bid of $130 unless there were other bidders. After a wait of several minutes I announced that it was sold to Mr. Frank N. Gage at the price of $130 per share.

Q. Did you give an order to deliver the shares to him?

A. Gave an order on Schwartz, Dupee & Company to deliver the shares to Mr. Gage upon payment to them of the amount bid.

Cross-examination waived.

Adjourned to Wednesday, July 7, 1897, at 10 o'clock a. m.

JULY 7, 1897.

Met pursuant to adjournment.
Present, as before.

Testimony of H. J. Davis (Continued).

Testimony of H. J. Davis continued:

On September 23, 1896, at 9.45 o'clock a. m., I delivered to Mr. Lathrop, the cashier of Jamieson & Company at their office, a letter dated September 22, 1896, identified by Mr. Billings and marked Exhibit 3. On September 24, 1896, at 9.50 o'clock a. m., I delivered to M. M. Jamieson personally, at the office of Jamieson & Co., a letter marked Exhibit 4, signed by Schwartz, Dupee & Company, together with the concurrence attached to said letter signed by Henry Clews & Company by Estabrook & Davis, the letter being dated September 23, 1896. Mr. Jamieson received it and said he would consult their attorney, and give Schwartz, Dupee & Company an answer at once. On September 24 I received through Schwartz, Dupee & Company a letter which I now offer in evidence and ask the master to mark Exhibit 16, and ask to have it read into the record:

EXHIBIT 16.

Jamieson & Co., bankers & brokers, 187 & 189 Dearborn St.

Members: New York stock exchange, Chicago stock exchange, Chicago board of trade.

CHICAGO, *Sept.* 24, 1896.

Schwartz, Dupee & Co., city.

GENTLEMEN: We have your letter of Sept. 23d. We have noted your suggestion therein, but as matters stand, we do not think any affirmative action is required on our part.

Yours truly, JAMIESON & CO.

147 On September 24, 1896, at 10.05 o'clock a. m., I personally saw Mr. Wilkins, the secretary of the stock exchange, and delivered to him a letter which I ask to have marked Exhibit 17 and to have copied into the record:

EXHIBIT 17.

SEPTEMBER 23, 1896.

To the Chicago stock exchange and its governing committee, Chicago.

DEAR SIRS: There is on deposit in the exchange twenty dollars ($20) per share on seven hundred (700) shares of the Diamond Match Company stock sold by us to Jamieson & Company for the August account; of this amount ten dollars ($10) per share was deposited by us, and ten dollars ($10) per share by Jamieson & Company to protect said contracts.

A tender of the stock was made by us to Jamieson & Company at their office, on the 31st day of August, 1896, before 1.30 p. m., as required by the rules. Jamieson & Company refused to accept the stock, and we now demand a payment to us of the amount of said deposits. Our clients on the transaction were Henry Clews & Company, and this demand is made on their behalf, without prejudice to their right to recover from Jamieson & Company any damages on account of the latter's default.

Very truly yours, SCHWARTZ, DUPEE & CO.

We concur in the above request.

HENRY CLEWS & CO.,
By ESTABROOK & DAVIS.

I have received no reply to that letter. I wish to correct one statement in my testimony the other day. It appears that I said when I first sent out the notices of the auction sale, I sent them to all bankers and brokers who were members of the stock exchange; what I meant to say was, and it is the fact, that I sent copies of the notice of the auction sale to all brokers who were members of the stock exchange and to all bankers in the city of Chicago.

The complainants rest.

OCTOBER 26, 1897.

It is stipulated that this cause is to be conducted on the admission by both parties that the stock exchange was closed by the order of the governing committee on August 3, and remained continuously closed until the 5th day of November, 1896.

It is stipulated that all the rules of the stock exchange may
148 be considered as attached to the answer of the governing committee; this means the answers of those defendants whose appearance was entered by Chester M. Dawes, and may be considered as in the testimony before the master.

Testimony of Frank M. Gage.

FRANK M. GAGE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

Direct examination by Judge MCCONNELL:

Q. Your full name, Mr. Gage, is Frank N. Gage, is it not?

A. Yes, sir.

Q. You attended a sale, did you not, Mr. Gage, in the rooms of the real-estate exchange on the 22d of September, 1896, where Mr. Davis had conducted a sale of seven hundred shares of Diamond Match Company, seven hundred shares of the capital stock of the Diamond Match Company?

A. In the real-estate board rooms?

Q. In the real-estate board rooms?

A. Yes, sir.

Q. And you made a bid, did you not, for seven hundred shares?

A. Yes, sir.

Q. And they were struck off to you at 130 per share?
A. Yes, sir; I think that was the price.
Q. For whom did you make that purchase?
A. Is that a matter of material import?
Q. We think so.
The MASTER: You may answer.
A. I might have made it for myself, or I may have made it——
Judge MCCONNELL: The master says you may answer.
A. I made it for Mr. Wagner.
Q. Wagner? Where does Mr. Wagner reside?
A. In New York now, I think.
Q. What are Mr. Wagner's initials?
A. I have forgotten; he has a peculiar name.
Q. Is it I. H.?
A. That is it—I. H.
Q. Do you know where his place of business is in New York?
A. I do not, sir; he used to be a neighbor of mine.
Q. Did you receive the instructions from him to buy at that sale?
A. Yes, sir.
Q. In what form?
A. Verbally.
Q. Where was it that you saw him when you received your verbal instructions?
A. In my office, I think.
Q. Was he living here?
A. Yes, sir; he was a resident at that time, I think.
149 Q. In what form did you make payment for the stock?
A. I do not think the money passed through my hands.
Q. You did not pay any money, did you?
A. Not directly, I think.
Q. Indirectly, how did you pay it, if you know?
Mr. DAVIS: That is what you presume; do you know of any settlement that he made?
A. I left them talking the terms of settlement over together.
Q. You only heard them talking about it?
A. Yes.
Q. You yourself did not pay over any money for them?
A. I did not.
Q. Do you know whether Mr. Wagner was acting for himself, or for some one else?
A. I presume for himself; I don't know.
Q. Was he here personally the day the sale occurred?
A. Yes, sir.
Q. Was he at the rooms of the real-estate board at the time?
A. I don't remember; I don't remember seeing him there.

Mr. DAVIS: He was there.

Q. Had you received instructions from him as to the amount you should bid?
A. Yes, sir.
Q. That is all I will ask you, Mr. Gage.

Cross-examination by Mr. DAVIS:

Q. You mean as to the limit?

A. My impression is it was one hundred thirty-five; I know I ran very nearly to it.

Q. I will ask you again—if it will refreshen your recollection—if it was not one hundred thirty-two?

A. I would not be positive; I know that when that bid was made for a portion of it that I thought that I did not want to lose my chances to buy.

Q. But you will not say that it was 135 or 132?

A. No, sir; I will say it was not over 136; that is the nearest I can remember at this time; I have no memorandum.

Q. But you will not say it was over one hundred thirty-two?

A. No, sir; I know I went very nearly my price; of one hundred thirty-two was what I paid, it might have been one hundred thirty-two.

Q. That is all.

Signature waived.

150 *Testimony of H. F. Billings.*

H. F. BILLINGS, a witness called on behalf of defendants, being first duly sworn, testified as follows:

Direct examination by Judge MCCONNELL:

Q. I do not suppose it is necessary to identify Mr. Billings; he has already been on the stand in this case——

Mr. DAVIS: Oh, no.

Q. —put on by the complainants. What purchases or sales of Diamond Match did the firm of Jamieson & Co. have with the firm of Schwartz, Dupee & Co. from the 3d of July to the 1st of August, 1896, for the account?

Mr. DAVIS: That is the July account, I suppose?

A. Well, on the 3d of July——

Q. Do you cover the month of July there?

A. Yes, sir; on July 3d we sold Schwartz & Dupee 100 Diamond Match at 223⅜ account; on the 14th of July we sold them 100 shares Diamond Match at 222 account; on the 20th of July we bought of them 100 shares Diamond Match at 221½ account; on July 21 we sold them 100 shares Diamond Match at 223 account; these were all transactions of course for July account; there was but July account during that time. Then on the 25th of July we changed over with them, selling them 50 for July account and buying 50 for August account Diamond; I have the prices here if you wish them.

Q. Are these all the transactions in Diamond Match, aside from such substitution as was made by the manager of the clearing-house, that you had with Schwartz, Dupee & Co.?

A. It was.

Q. In the month of July?

A. Yes, sir.

Q. These were the only direct transactions, in other words?

A. Yes, sir.

Q. These were all the purchases and sales of Diamond Match stock in the month of July, 1896?

A. Yes, sir.

Mr. DAVIS: You mean directly between Jamieson & Co. and Schwartz, Dupee & Co.?

A. Yes.

Q. Did you ever have in that month any dealing whatever with the firm of Clews & Co.?

A. No, sir.

Q. Were Clews & Co. members of the stock exchange?

A. They were not.

Q. The firm of Jamieson & Co. had been regularly members of the stock exchange and brokers dealing in stocks, bonds and
151 other securities for a number of years, had they not?

A. Yes, sir.

Q. What was the price of—the stock exchange, Mr. Billings, was closed on the 3d of August by the governing committee, and remained closed continuously until the 5th day of November, 1896, have you any recollection now as to the price of Diamond Match when the stock board—when the stock exchange was reopened on the 5th of November?

A. I should say around 140.

Q. You gave those figures the other day, you know?

Mr. DAVIS: Mr. Wilkins testified 130.

Q. We have it all figured out here; maybe I can refresh your recollection?

A. If Mr. Wilkins testified that figure, it is all right.

Q. Perhaps Mr. Gage can recall it; Mr. Gage, do you recollect what price Diamond Match opened at after the exchange was opened?

Mr. GAGE: It started in about 130 and in a few days reached 140.

Mr. DAVIS: It dropped first away down.

Mr. BILLINGS: It never went below 130.

Mr. DAVIS: Never did?

Mr. BILLINGS: That is my recollection.

Mr. DAVIS: It went down to 116, Mr. Billings.

It will be stipulated that a statement may be added to the testimony of Mr. Wilkins over his signature, without being recalled before the master, showing the price of Diamond Match for the first thirty days after the opening of the stock exchange, and the highest and lowest point reached since.

Mr. DAVIS: We will agree that he will make such a statement, which, if not otherwise objectionable, may be considered in evidence, but of course we object to the materiality but not to the form in which the testimony is adduced.

Cross-examination by Mr. DAVIS:

Mr. Billings, the statement you have given of your dealings in Diamond Match stock only includes such direct sales and purchases as were originally made on the exchange with Schwartz, Dupee?
A. That is all.

Judge MCCONNELL: Pardon me, there is one other question I would like to ask before you go on with the cross-examination.
(Judge McConnell asks a question of witness not heard by reporter and witness answers in the negative.)

152 Cross-examination resumed:

Q. It does not include dealings wherein the manager of the stock exchange makes substitution under the rules, does he?
A. No.
Q. You had other dealings in July in Diamond Match stock on the board with other parties than Schwartz, Dupee & Company, had you not?
A. Yes, sir.
Q. Dealings, I mean for the August account?
A. Yes.
Q. And on August 3, 1896, you had purchased for the August account more than seven hundred shares of Diamond Match stock, had you not; you had contracts outstanding on August 3 for more than seven hundred shares, had you not?
A. I cannot say now; I think we did.
Q. Did you see "Exhibit 7" which was introduced in evidence, and has been copied into the testimony?
A. I have the original here.

Judge MCCONNELL: It does not make any difference.

Q. I will call the witness' attention to it as copied.

(Exhibit 7 is read and shown to witness.)

Judge MCCONNELL: You remember that, do you?
A. Yes, sir.
Q. And you also saw when it was introduced as evidence, Exhibit 6, being a corresponding card signed Schwartz, Dupee & Co., did you not?

(Exhibit 6 shown to witness.)

A. I don't think I ever saw that, we probably had it.
Q. When, under the rules of the exchange, the manager of the clearing-house substitutes dealings for the account the purchaser and seller who are substituted sign cards similar to the ones to which I call your attention, which are sent, are they not?

Judge MCCONNELL: I am interposing an objection to this question; it is not cross-examination. I put Mr. Billings on the stand to ask what direct transactions there were, exclusive of substitution matters, using that expression, between Jamieson & Co. and

Schwartz, Dupee & Co.; now he is cross-examining him about the substitution. I asked nothing about that; nothing about substitution trades or anything of that kind; that is part of their case, if they want to make it.

The MASTER: This is cross-examination.

Judge MCCONNELL: I object to the materiality of it, the relevancy of it. I propose to raise the question in this case whether they had any right to substitute at all. I have asked what were the direct trades. I have not gone into the question of substitu-
153 tion; there were substitution cards here; that they have proven; I have never gone into a dispute of the fact that there were cards signed respectively, Jamieson & Co. on the one side and Schwartz, Dupee & Co. on the other, but out of that there will be raised a question; and I put Mr. Billings on particularly not to contradict their case that there were substitution cards passed, and that the manager of the clearing-house undertook to substitute one purchaser and one buyer for several others, but simply to show that there were direct trades between Schwartz, Dupee & Co., just what they were and the limit of them, and they have no right to cross-examine about substitution, for I have said nothing about it. I have said what were the direct trades between Schwartz, Dupee & Co. and themselves; they have their case about substitution, which is quite apart from the inquiry I have made.

The MASTER: It is proper to inquire if the trades made included substitution.

Mr. DAVIS: It is the rule of this court that a party is limited upon cross-examination to the same matters which were called out upon direct examination, is that the rule in this court?

Judge MCCONNELL: I think it is, unless you make the witness your own witness; if you want to put Mr. Billings on so that I may——

Mr. DAVIS: If it is not material, it is not proper whether it is cross-examination——

Judge MCCONNELL: It is unless you object to it.

The MASTER: Supposing you ask a question first whether there were trades which he has named; let the question be answered and it be considered as testimony on behalf of the complainant.

Judge MCCONNELL: To which the defendant duly objects, upon the ground of irrelevancy, immateriality and incompetency of the testimony.

(Question read.)

A. I think they are.

Adjourned until Friday, October 29, 1897, at 2 o'clock.

It is stipulated that the deposition of Mr. I. H. Wagner of New York city may be taken before any officer authorized to take depositions, upon two (2) days' notice; the deposition to be taken orally and be returned to the master to be considered as part of the testimony in this case, to be signed and certified in the usual manner. Mere formalities of return in the deposition will be waived.

OCTOBER 29, 1897.

Pursuant to agreement of counsel, this cause is adjourned until October 30, 1897.

OCTOBER 30, 1897.

154 Met pursuant to adjournment.

Present: Mr. Davis for complainants, Judge McConnell for defendants.

Stipulation.

The following facts are admitted by counsel for complainant-:

It is admitted by the complainants that at the time complainants gave the several orders to Schwartz, Dupee & Company to sell on the Chicago stock exchange the various amounts of Diamond Match Company stock, and at the time said Schwartz, Dupee & Company executed said orders, said Schwartz, Dupee & Company did not have in their hands any stock of said Diamond Match Company which was the property of the complainants, nor did said Schwartz, Dupee & Company at any time thereafter have in their hands any of the stock of said Diamond Match Company, which was the property of complainants.

It is admitted by the complainants that the 1,150 shares of the capital stock of the Diamond Match Company tendered to Jamieson & Company, by Schwartz, Dupee & Company, on August 31, 1896, were not the property of the complainants nor any part thereof.

It is further admitted that the 700 shares of said stock alleged in the bill of complaint to have been sold on the 22d day of September, 1896, were not delivered to Frank N. Gage, but immediately after said sale said shares of stock were delivered to Major J. W. Conley, one of the firm of Schwartz, Dupee & Company, by H. J. Davis, who conducted said sale on behalf of Henry Clews & Company, for safe keeping by the said J. W. Conley; that afterwards, and on the same day, said H. J. Davis delivered to said Frank N. Gage a memorandum in words as follows:

"SEPTEMBER 22, 1896.

Sold to Frank N. Gage 700 shares of Diamond Match stock numbered A 680–686, inclusive, at $130 per share.

HENRY CLEWS & CO.,
Per ESTABROOK & DAVIS."

That thereupon said Gage wrote below said memorandum the following:

"CHICAGO, *September* 22, 1896. O. K.

Please deliver above to I. H. Waggoner, Esq., and accept his check in settlement.

FRANK N. GAGE."

155 And thereupon said Gage redelivered said memorandum and said order to said H. J. Davis, who thereupon delivered the same to Mr. I. H. Waggoner, together with an order on Schwartz, Dupee & Company to deliver said certificates of shares to said Wag-

goner, upon being paid the amount of $130 per share. That said Gage was employed by said Waggoner to bid at said sale, and that said Waggoner was acting for and on behalf of the complainants in this suit in the employment of said Gage.

Complainants object to the foregoing admission being considered as evidence; for while admitting that these are the facts, at the same time they claim they are immaterial to the issues in this case, and object on the ground of immateriality.

NOVEMBER 12, 1897.

Met pursuant to agreement.

Present: Mr. Davis, solicitor for complainants, and Hon. S. P. McConnell, solicitor for defendants.

Testimony of Walter Comstock (Recalled).

WALTER COMSTOCK, a witness on behalf of the defendants, being recalled, testified as follows:

Direct examination by Judge MCCONNELL:

Q. What is your full name?
A. Walter Comstock.
Q. You have already been sworn in this case?
A. I have.
Q. You are in the employ of Schwartz, Dupee & Co.?
A. Yes, sir.
Q. And have been for the last few years?
A. Yes, sir.
Q. Do you know whether or not Major Conley had in his hands on September 22, 1896, seven hundred shares of Diamond Match Company stock, which had been handed to him by Mr. H. J. Davis?
A. Yes, sir.
Q. Was that stock delivered to I. H. Waggoner on that day, or on any later day?
A. No.
Q. Did Mr. Waggoner give his check to Major Conley, or to the firm of Schwartz, Dupee & Co. for that stock?
A. We have no entry of any such check.
Q. Well, as a matter of fact——
A. He did not.
Q. Did he pay any money for that stock?
A. He did not.
Q. Did that stock remain in the hands of Schwartz, Dupee & Co.?
A. For how long?
Q. Well, until some time after September 22.
A. Yes.
Q. Did it ever go into the hands of Waggoner?
A. No.
Q. Or of Gage?
A. No.

Q. Or of Clews & Co.?
A. No.
156 Q. The stock all of the time was the property of Schwartz, Dupee & Co., was it not?
A. Yes.
Q. But it was not at any time the stock of Clews & Co.?
A. It was not their stock.
Q. And was in your possession?
A. It was.
Q. Both before and after this 22d of September?
A. It was.

Cross-examination by Mr. DAVIS:

Q. Mr. Comstock, the arrangement relative to that stock was that it was furnished by Schwartz, Dupee & Co. to Clews & Co. to be put up at auction, that was the arrangement?
A. That was the arrangement; yes, sir.
Q. And Clews & Co. had arranged with Schwartz, Dupee & Co. to substitute other stock in case this stock passed out of the hands of Schwartz, Dupee & Co., did they not?
A. Yes, sir.
Judge MCCONNELL: May I interject a question there? By that you mean that Clews & Co. had made an arrangement that if this stock happened to be gotten by some outside man, they would buy seven hundred shares of stock and bring it in?

Mr. DAVIS: I object.

A. I don't know that was what they meant, that they would furnish him with the stock; I don't know what they would give, or anything like that.
Judge MCCONNELL: They had to buy or borrow it in order to get it?
A. They may have had the stock.
Q. Not in your hands?
A. No.

Mr. DAVIS:

Q. But the arrangement was that if the purchaser at this auction sale should take this stock which Schwartz, Dupee & Co. had furnished for the purpose of this sale, then Clews & Co. were to substitute their stock of like amount in the place of the stock sold?
A. That is correct.

Judge MCCONNELL: But, as a matter of fact, no one got the stock—the stock was brought back to Schwartz, Dupee & Co. and remained there——
Mr. DAVIS: I object to the form of that question; you have the facts; as a matter of fact——
Judge MCCONNELL: As a matter of fact, I said the stock was brought back, was it not, to Schwartz, Dupee & Co. and remained in their hands?

Mr. DAVIS: It is admitted.

157 The MASTER: He has already stated that.

Statement Chicago Stock Exchange.

It is stipulated that the following is a true statement of the settlement price of Diamond Match stock on the Chicago stock exchange beginning November 5, 1896, and ending December 10, 1896; and that the lowest price was, since November 5, in December 21, 1896, when the price was $108\frac{3}{60}$; and that the highest price, since November 5th, was on September 17, 1897, when the price was $161\frac{1}{2}$.

1896.			
Nov.	5.	Settlement price	$129\frac{1}{2}$
	6.	"	$133\frac{3}{4}$
	7.	"	138
	9.	"	144
	10.	"	$142\frac{1}{2}$
	11.	"	$137\frac{3}{4}$
	12.	"	135
	13.	"	137
	14.	"	$135\frac{1}{8}$
	16.	"	131
	17.	"	$130\frac{1}{8}$
	18.	"	$127\frac{3}{4}$
	19.	"	$127\frac{1}{2}$
	20.	"	$125\frac{1}{4}$
	21.	"	$125\frac{1}{2}$
	23.	"	$127\frac{1}{2}$
	24.	"	$131\frac{1}{2}$
	25.	"	$129\frac{1}{2}$
	27.	"	130
	28.	"	129
	30.	"	129
Dec.	1.	"	130
	2.	"	$127\frac{1}{2}$
	3.	"	$126\frac{1}{2}$
	4.	"	$123\frac{1}{2}$
	5.	"	123
	7.	"	121
	8.	"	$120\frac{1}{8}$
	9.	"	$119\frac{1}{2}$
	10.	"	120
1896.			
Dec.	21.	Low price	$108\frac{3}{60}$
1897.			
Sept.	17.	High price	$161\frac{1}{2}$

158 Mr. DAVIS:

Q. Mr. Comstock, Schwartz, Dupee & Co. settled with Jamieson & Co. for the 450 shares of stock embraced in the 1,150 shares, which had been substituted on August 3, did they not?

A. They settled with them for the 450.

Q. What was the date of that settlement?

A. I did not think about that and I didn't post myself on that date; I couldn't tell without referring to the books.

Q. You know, as a matter of fact, that the parties have by private settlement settled for that 450 shares, do you not?

A. Yes, sir.

Q. And that settlement did not include any settlement for the 700 shares which Schwartz, Dupee & Co. sold for Clews & Co.?

A. No; the 400 shares were entirely separate from the 700.

Q. And that settlement was made after the commencement of this suit, was it not—was it before or after?

A. That I cannot remember without looking at the book.

Judge McConnell: I would like to have this stipulation, for I think you will need it; you have introduced the rules of the stock exchange; from the rules of the stock exchange, it would appear that Schwartz, Dupee & Co. when they made these trades had to put up some money, and that we put up some money; now, it seems to me inasmuch as Clewes & Co. are complainants here, and yet from the reading of that rule, it would seem that Schwartz, Dupee & Co. were the people who put up the money, we might have some difficulty in struggling with the facts on that question.

Mr. Davis: The answer of Schwartz, Dupee & Co. admits that they put up the money, but charged it in an open account.

Judge McConnell: Let us stipulate here—suppose we stipulate in the case here that the $7,000 which had been originally put up by Schwartz, Dupee & Co. as a margin on this trade is an account which now—say arrangements have been made as between Schwartz, Dupee & Co. and Clews & Co. that it has been transferred to Clews & Co.

Mr. Davis: That practically is in the answers.

The Master: I think that is admitted.

Judge McConnell: But if it is not, I want it in; the ——

Mr. Davis: The answer of Schwartz, Dupee & Co. admits that.

Judge McConnell: I want it in for two reasons; because if this—if you get a decree, you ought to have it; and if I get a dismissal, for want of equity, I want it.

159 *Stipulation.*

It is admitted that Schwartz, Dupee & Co. have no claim whatever of any kind or character against the fourteen thousand dollars, seven thousand dollars of which was respectively contributed by Schwartz, Dupee & Co. and Jamieson & Co. to the clearing-house of the Chicago stock exchange.

Mr. Davis:

Q. That money, Mr. Comstock, was put up by Schwartz, Dupee & Co. and still stands in their name?

A. That is—an account is never closed with Clews & Co.

Judge McConnell: That is just why I want this.

The MASTER: But that is Clews & Co.'s money?
Judge McCONNELL: Undoubtedly, you have had a settlement.

Judge McCONNELL:

Q. Mr. Comstock, when the original transactions by which certain stock was sold on the stock exchange, had by Schwartz, Dupee & Co. on the stock exchange, and the substitution made to Jamieson & Co. on the third day of August, there were certain deposits made respectively by Schwartz, Dupee & Co. and Jamieson & Co., seven thousand dollars by each of these firms, in the aggregate fourteen thousand dollars, did Schwartz, Dupee & Co. have any claim of any kind or character or any interest in that fund?

A. They have a claim on the clearing-house, stock exchange clearing-house, for seven thousand dollars for the account of Clews & Co.

Q. Then, as a matter of fact, the real interest in that fund is that of Clews & Co.?

A. Yes, sir.

Mr. DAVIS:

Q. Schwartz, Dupee & Co. would have to account to Clews & Co. if they received it?

A. Yes, sir.

Judge McCONNELL:

Q. And Schwartz, Dupee & Co., except as they should do for Clews & Co., have no claim or interest in the seven thousand dollars which was deposited by Jamieson & Co.?

A. They have no interest in that except for the account of Clews & Co.

The MASTER: In other words, they are simply the agents for the complainants; whatever they hold, they hold for the complainants.

Mr. DAVIS: Any part of that fourteen thousand dollars they received, they received in trust for Henry Clews & Co.

WITNESS: We have no interest in any part of that except as agents for Clews & Co.

Adjourned, subject to agreement of counsel.

I hereby certify that the foregoing is all the evidence taken on behalf of the complainants and defendants, and that the signatures of all witnesses were waived by stipulation of counsel.

E. B. SHERMAN,
Master in Chancery of said Court.

160 *Master's Fees for Taking Proofs.*

Complainants', paid by them.....	$87.15
Defendants', paid by them.....	23.10

(Endorsed:) Filed Jan. 22, 1898. S. W. Burnham, clerk.

Clerk's Certificate.

NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing is a true, full and complete transcript of all the papers, exhibits, depositions, proofs, assignment of errors, and of the record of all proceedings had in the said court in a cause heretofore pending therein wherein Henry Clews, Charles M. Foster and James B. Clews are complainants, and Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William N. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom are defendants, as the same appear from the records and files of said court now remaining in my custody and control, including at pages 37 and 38, the opinion of the Honorable P. S. Grosscup, judge of said court, filed therein upon the overruling of the demurrer to complainants' bill; and including, at pages 112, 113, 114, 115 and 116, the opinion of Honorable P. S. Grosscup, judge of said court, filed in said cause upon the final hearing thereof.

I further certify that there is attached hereto and transmitted herewith the original citation signed by the Honorable P. S. Grosscup, judge of said court, together with the acknowledgment of services endorsed thereon, which citation and acknowledgment of service were filed in my office on the 26th day of July, 1898.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this second day of August, 1898.

[SEAL.] S. W. BURNHAM, *Clerk.*

161 *Præcipe.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

CLEWS ET AL. }
vs. } 24261.
JAMIESON ET AL. }

The clerk of said court will please make a transcript of all the papers, exhibits, depositions, proofs, assignment of errors and other proceedings had in the above-entitled cause, for use in the United States circuit court for the seventh circuit, on appeal.

LOWDEN, ESTABROOK & DAVIS,
Sol'rs for Compl'ts.

Placita.
Bill of complaint.
Subpœna and return of marshal.
Answer of certain defendants.
Demurrer of certain defendants.
Answer of certain defendants.
Replication.
Order, demurrer heard and advisement.
Order, demurrer overruled.
Opinion by Judge Grosscup.
Answer of certain defendants.
Replication.
Order of reference.
Master's report.
Objections to master's report.
Exceptions to master's report.
Stipulation to file amended bill.
Order, leave to file amended bill, &c.
Amended bill.
Answer to amended bill.
Stipulation of facts.
Order, setting case for hearing.
Order substituting solicitors.
Order, heard and taken under advisement.
Opinion by Judge Grosscup.
Order dismissing bill.
Petition for appeal.
Assignment of errors.
Order allowing appeal.
Appeal bond.
162 Testimony.
H. F. Billings, for compl't
John W. Conley, " "
Walter Comstock, " "
Jos. R. Wilkins, " "
H. J. Davis, " "
Frank N. Gage, for def'ts.
Walter Comstock, " "

Citation.

UNITED STATES OF AMERICA, *ss:*

To Malcolm M. Jamieson, Roland C. Nickerson, Harry F. Billings, Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, A. L. Dewar, Gustavus A. Schwartz, John Dupee, John W. Conley, and Isaac J. Bloom:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals, for the seventh circuit, to be holden at Chicago, Illinois, on or before the 22d day of August, 1898, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, northern division, wherein Henry Clews, Charles M. Foster and James B. Clews are appellants, and you are appellees, to show cause, if any there be, why the order and decree mentioned in said appeal should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 23d day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

P. S. GROSSCUP,
Circuit Judge.

163 We hereby acknowledge service of the within citation this 23d day of July, 1898.

TENNEY, McCONNELL, COFFEEN & HARDING,
Solicitors for Malcolm M. Jamieson, Roland C. Nickerson and Harry F. Billings, Gustavus A. Schwartz, John Dupee, Jno. W. Conley, Isaac J. Bloom.

C. M. DAWES,
Solicitor for Edwin G. Foreman, Charles Henrotin, A. W. Wheeler, J. J. Townsend, S. B. Chapin, George E. Wright, H. Herbst, Henry C. Hackney, F. H. Watriss, C. C. Adsit, C. A. Whyland, B. R. Cahn, B. B. Lamb, Charles C. Yoe, William V. Baker, Charles A. Wilson, J. M. Adsit, Frank N. Gage, Fred G. Frank, William B. Wrenn, D. M. Cummings, W. G. Wasmansdorff, George A. McClellan, and A. L. Dewar.

Filed July 26, 1898.

S. W. BURNHAM, *Clerk.*

164 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on

Monday, the third day of October, 1897, in the October term, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-second year.

And afterwards, to wit, on the sixth day of August, 1898, in the October term last aforesaid, came the appellants, by their counsel, Mr. Frank C. Lowden, Mr. Henry D. Estabrook, and Mr. Herbert J. Davis, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. Clews, Complainants and Appellants,
vs.
MALCOM- M. JAMIESON ET AL., Defendants and Appellees.
} Appearance.

165 We hereby enter our appearance as counsel for appellant in the above-entitled cause.

FRANK C. LOWDEN.
HENRY D. ESTABROOK.
HERBERT J. DAVIS.

Dated Chicago, August 6th, 1896.

Endorsed: Filed Aug. 6, 1897. Oliver T. Morton, clerk.

And afterwards, to wit, on the sixteenth day of August, 1897, in the October term last aforesaid, came the appellees, by their counsel, Mr. Samuel P. McConnell and Mr. Horace Kent Tenney, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1897.

HENRY CLEWS ET AL., Appellants,
vs.
MALCOMB M. JAMIESON ET AL.
} No. 533.

The clerk will enter *my* appearance as counsel for the appellees.

SAMUEL P. McCONNELL.
HORACE KENT TENNEY.

Endorsed: Filed Aug. 16, 1897. Oliver T. Morton, clerk.

166 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-room, in the city of Chicago, in said seventh circuit,

on the third day of October, 1898, of the October term, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third year.

And afterwards, to wit, on the ninth day of November, 1898, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain stipulation in the above-entitled cause, said stipulation being in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

HENRY CLEWS ET AL.
v.
MALCOMB M. JAMIESON ET AL.

It is stipulated by and between the parties to the above-entitled cause that the time for filing appellants' brief herein may be extended to the first day of December, 1898.

LOWDEN, ESTABROOK & DAVIS,
Solicitors for Appellants.

SAMUEL P. McCONNELL,
HORACE KENT TENNEY,
Solicitors for Appellees Jamieson & Co.

Endorsed: Filed Nov. 9, 1898. Edward M. Holloway, clerk.

167 And afterwards, on the same day, to wit, on the ninth day of November, 1898, the following proceedings were had in the above-entitled cause and entered of record, to wit:

WEDNESDAY, *November* 9, 1898.

Court met pursuant to adjournment.
Present: Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit —.

Before Hon. William A. Woods, presiding judge.

HENRY CLEWS, CHARLES M Foster, *et al.*
vs.
MALCOMB M. JAMIESON ET AL.

533. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

On filing of stipulation of counsel it is ordered by the court that the time allowed by the rules of this court in which appellants may file brief in this cause be, and the same is hereby, extended to and including December 1, 1898.

And afterwards, to wit, on the seventh day of February, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

168 TUESDAY, *February* 7, 1899.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Peter S. Grosscup, circuit judge.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS
vs.
MALCOMB M. JAMIESON, ROLAND C. Nickerson, and Henry F. Billings.

533. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing March 16, 1899.

And afterwards, to wit, on the fourteenth day of February, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

169 TUESDAY, *February* 14, 1899.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

Order.

It is ordered by the court that William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, be, and he is hereby, designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

And afterwards, to wit, on the sixteenth day of March, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, *March* 16, 1899.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. William H. Seaman, district judge.

170 HENRY CLEWS, CHARLES M. Foster, and JAMES B. CLEWS
vs.
MALCOMB M. JAMIESON, ROLAND C. Nickerson, and Henry F. Billings.

533. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Now this day come the parties, by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. H. D. Estabrook, counsel for ap-

pellants, and by Mr. S. P. McConnell, counsel for appellees, and the court, having heard the same, takes this matter under advisement.

At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the third day of October, 1899, in the October term, in the year of our Lord one thousand eight hundred and ninety-nine, and of our Independence the one hundred and twenty-fourth year.

And afterwards, to wit, on the third day of October, 1899, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above-entitled cause, said opinion being in the words and figures following, to wit:

171 In the United States Circuit Court of Appeals for the Seventh Circuit, January Session, A. D. 1899.

HENRY CLEWS, CHARLES M. FOSTER, and James B. Clews, Appellants, *vs.* MALCOMB M. JAMIESON, ROLAND C. Nickerson, Henry F. Billings, *et al.*, Appellees.	No. 533. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Before Woods and Jenkins, circuit judges, and Seaman, district judge.

The appellants, comprising the firm of Henry Clews & Company, of the city and State of New York, filed their bill in equity, naming as defendants (1) the members of the firm of Jamieson & Company, (2) the managing members of the Chicago stock exchange, and (3) the members of the firm of Schwartz, Dupee & Company, all citizens of the State of Illinois. The theory of the bill and the relief prayed for are thus stated in the brief of counsel for appellants: "To have administered and turned over to them $14,000, in the possession of the managers of the Chicago stock exchange, claimed by appellants to have been deposited in trust as security for the performance of a contract whereby the appellants agreed to sell and deliver, and the appellees, Jamieson & Company agreed to receive and pay for, on the 31st day of August, 1896, seven hundred shares of Diamond Match Company stock; which contract it is alleged Jamieson & Company failed and refused to perform;" also to obtain "an accounting for the loss and damages sustained by
172 the appellants by reason of the breach of contract, and that Jamieson & Company be decreed to pay to the appellants the amount ascertained."

Separate answers were filed by the defendants Jamieson & Company and Schwartz, Dupee & Company. The remaining defendants demurred to the bill as not stating a cause of action cognizable in equity, but the demurrer was overruled and such defendants filed

separate answer. On the issues thereupon the case was sent to a master, who heard the testimony and reported his findings, which were in favor of the complainants upon all issues, and that on the accounting there was due to them from Jamieson & Company $64,400.

The hearing before the court was upon exceptions to the master's report and upon certain stipulations of further facts, and resulted in a dismissal of the bill for want of equity. From the opinion filed this conclusion appears to have been based on the view that the complainants were not privies to the transaction between Schwartz, Dupee & Company and Jamieson & Company. This appeal is from the decree of dismissal so entered.

The facts are substantially undisputed. The appellants, Henry Clews & Company, were operators in stocks and bonds at New York city; and Schwartz, Dupee & Company were like operators or brokers at Chicago, on the Chicago stock exchange, as members. Jamieson & Company were also like operators and members of the Chicago stock exchange. The relation of the complainants to any transaction in question appears in communications by wire between them and Schwartz, Dupee & Company, which are stipulated in the case as follows:

"On the 16th day of July, 1896, at 11.19 a. m., Schwartz, Dupee & Company received the following order from H. Clews & Company, by telegram:

'Sell 500 Diamond Match at 220½ for ac.'
(Signed) 'H. CLEWS & CO.'

"On the same day, at 11.35 a. m., Schwartz, Dupee & Company telegraphed Henry Clews & Co. as follows:

'Sold 500 Diamond Match at 221⅛ for the account.'
(Signed) 'SCHWARTZ, DUPEE & CO.'

"On the 20th day of July, 1896, at 9.23 a. m., Schwartz, Dupee & Company received a telegram reading as follows:

'Sell 200 Diamond Match at 221 for the account at opening of market. They want put out at opening if possible, but it is good all day.'
(Signed) 'CLEWS.'

"On the same day, at 10.08 a. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

'Sold 200 Diamond Match 221½ for the account.'
(Signed) 'SCHWARTZ, DUPEE & CO.'

173 "On the 25th day of July, 1896, at 11.41 a. m., Clews telegraphed Schwartz, Dupee & Co. as follows:

'Change the Diamond Match over to August account at 2½ per cent. If you can do it let us know at once.'
(Signed) 'CLEWS.'

"And shortly after that, on the same day, at 11.48 a. m., Clews sent the following dispatch to Schwartz, Dupee & Company:

'You sent us the difference this morning at 2½. At what difference can you do it now?'
(Signed) 'HENRY CLEWS & CO.'

"On the same day at 11.58 a. m., Clews telegraphed Schwartz, Dupee & Co. as follows:

'Change the 500 at two cents or better.'
(Signed) 'CLEWS.'

"On the same day, at 12.11 p. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

'Bought Diamond Match 227 for the account.'
Sold 500 229 account 2nd.
(Signed) 'SCHWARTZ, DUPEE & CO.'

"On July 27, at 8.55 a.m., Clews telegraphed Schwartz, Dupee & Co. as follows:

'Change 200 more Diamond Match 2 per cent. or better.'
(Signed) 'CLEWS.'

"On the same day, at 10.53 a. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

'We changed the 200 Match at 2¼ difference. Will give you prices later.'
(Signed) 'SCHWARTZ, DUPEE & CO.'

"On the same day, at 10.55 a. m., Schwartz, Dupee & Co. telegraphed Clews as follows:

'Bought 200 Match 226¾ account. Sold 200 2nd account.'
(Signed) 'SCHWARTZ, DUPEE & CO.'"

And the stipulation further states: "That the orders of Henry Clews & Company to Schwartz, Dupee & Company contained in said messages were, as a matter of fact, executed as set forth in the aforesaid messages from Schwartz, Dupee & Company on the Chicago stock exchange."

The word "account" as used in these telegrams was understood, in the language of the stock exchange, to mean that the last day of the current month was the "day of delivery" on the proposed sale. The message of July 25, so interpreted, was understood to mean that five hundred shares of the stock previously sold for "account" should be carried over to August account, or "account second" for which accommodation the seller allowed two cents on the
174 dollar, making $2.29 per share. The final direction on July 27, was to place two hundred more shares on the same terms for August account, making their offers on that account seven hundred shares, with all previous offers cancelled.

By the rules of the stock exchange each broker, as a member, was required to keep on deposit with the managers of the exchange, as a trust fund to secure performance, an amount equal to ten per cent. par value of the stocks bought or sold, and this deposit is re-adjusted at the close of each day's session. Under this rule Schwartz, Dupee and Company claim to have kept their doposits good, and this deposit, together with that made by the buyer, constitute the alleged trust funds referred to in the bill for which administration is sought.

The method of conducting business in the stock exchange between the brokers in thus fairly stated in the master's report and in the opinion filed by the trial court:

"At ten o'clock there is an official call at which the secretary and manager call all the stocks, bonds, and securities on the official printed list, and as this call progresses, any member wishing to buy or sell, bids thereon, and the record is made of the transaction; after which there is an irregular call, which closes at half past one, when the manager of the clearing-house announces the clearing-house or settlement price- for the day, which are the closing prices on the exchange for the respective stocks and securities; that the manager then substitutes trades and sends out cards to all buying or selling on account for the current month, or for the next month; that on the 25th of the month and thereafter until the second day before the end of the month, two calls are made, one for the current month, and one for the next ensuing month, and this is done to allow those who wish to do so to change their accounts over to the next month. That this substitution was made by the clearing department by a system somewhere similar to that employed by the clearing-house for banks, that is, that where a broker has purchased and sold during the day the same amount of the same kind of stocks or bonds, his account is balanced by the clearing department, and all margins deposited by such broker may be withdrawn; that when sales and purchases are made by different brokers, one buying and the other selling, the same kind of stock or bonds, a substitution is made by the manager of the clearing department, by which it appears that the broker selling has sold such stock, not to the person to whom it was originally sold, but to a person or persons other than those to whom such sales were originally made and who originally bought of some one else, and that a broker purchasing stock has purchased from some broker other than the broker from whom he originally purchased the same; for instance, if A sold 100 shares
175 of stock to X, and B has bought the same amount of the same stock from Y, and X's and Y's accounts are balanced by other transactions, the substitution would make it appear that A had sold 100 shares to B, and B had bought 100 shares from A, and the names of the parties with whom the original transactions had actually been made by A and B would not appear on the clearing-house sheet; that in the transaction on said exchange it is then customary for the parties thus substituted and brought into the relation of buyer and seller with each other by the manager, to assent to the new relations thus formed, and to confirm the transactions as thus

adjusted by the manager, and to put up the margins required by the rules, unless the margins are already on deposit in the exchange, in which case they are transferred by the manager to the new account."

The stipulation of facts further shows all dealings of both Schwartz, Dupee & Company and Jamieson & Company which appeared upon the clearing-house sheets of the exchange for all dates in question; and although the former had original and substituted trades in Diamond Match stock with sundry other brokers prior to August 3, 1896, no trade appears with Jamieson & Company up to that date, except to the extent of 100 shares. On August 3, Jamieson & Company appeared as taking by "substitution" from Schwartz, Dupee & Co. 1,150 shares of such stock at $2.22. Of this transaction it is asserted on behalf of complainants, that 700 shares were "substitution trades" for the complainants' orders of July 25 and July 27, although at lower price than named in the order, and that Jamieson & Company thereby became the "ultimate purchaser-" of such shares in accordance with the rules of the exchange; and that "it is seldom the original purchaser who is ultimately made responsible, but by a process of daily novations the original purchaser, and many subsequent purchasers, liquidate their contracts and are discharged from liability thereon before the 'account day,' some other member of the exchange assuming the new obligation."

The stipulation in reference to the trades by Schwartz, Dupee & Co. further states as follows:

"That the 500 shares sold July 25, 1896, by Schwartz, Dupee & Company, for the 'August account,' was sold for the account of Clews & Company, the complainants; that 200 shares of the 350 shares, sold July 27, 1896, by Schwartz, Dupee & Company, for the 'August account,' were also sold on account of complainants; that all of the other sales made by Schwartz, Dupee & Company for the 'August account' were made on behalf of other clients than the complainants; that the 750 shares sold by Schwartz, Dupee & Company, on July 28th, 1896, were sold for four different clients of Schwartz, Dupee & Company; for one to the amount of 50 shares, for another to the amount of
176 300 shares, for another to the amount of 350 shares, and for another to the amount of 50 shares. The client for whom Schwartz, Dupee & Company bought the 350 shares on July 27th is the same person for whom they sold 350 shares on July 28th, and who sold in order to close his purchase of July 27th. That the client for whom Schwartz, Dupee & Company sold 300 shares on July 28th, is the same person for whom Schwartz, Dupee & Company bought 300 shares on July 29th, and said purchase of July 29th was made to cover said person's sale of July 28th. That the transactions heretofore set out in this stipulation of purchase and sale of Schwartz, Dupee & Company and the other brokers whose names are stated, with the exception of those transactions which are marked as substitutions, were had by the brokers on behalf of different clients or principals whom they represented, and those transactions, so far as the different principals are concerned, were not

settled or canceled by any of the substitutions, nor by any of the settlements between the brokers, except so far as where one client or principal of a broker was, through such broker, both a purchaser and a seller. In other words, the settlements by substitution or otherwise through the clearing-house were merely settlements between the members of the stock exchange, and were not settlements or cancellations of the contracts between the principals whom the bankers represented and the brokers themselves, except where the same broker had both purchased and sold for the same client."

On August 3, 1896, the Chicago stock exchange was closed by order of the managers and remained closed until November 5, 1896, so that there was no opportunity for further transactions on the exchange in reference to the subject-matter of this controversy, after August 3rd.

On August 31, 1896, Schwartz, Dupee & Co. made personal tender to Jamieson & Company of 1,150 shares of Diamond Match stock and the latter refused to accept or pay for the same.

The following stipulation further appears:

"It is admitted by the complainants that at the time complainants gave the several orders to Schwartz, Dupee & Company to sell on the Chicago stock exchange the various amounts of Diamond Match Company stock, and at the time said Schwartz, Dupee & Company executed said orders, said Schwartz, Dupee & Company did not have in their hands any stock of said Diamond Match Company which was the property of the complainants, nor did said Schwartz, Dupee & Company at any time thereafter have in their hands any of the stock of said Diamond Match Company which was the property of the complainants. It is admitted by the complainants that the
1,150 shares of the capital stock of the Diamond Match Com-
177 pany tendered to Jamieson & Company by Schwartz, Dupee
& Company on August 31, 1896, were not the property of the complainants, nor any part thereof."

No communication with or appearance on the part of Henry Clews & Company is shown in reference to the transactions after July 27th and up to September 10th and 11th, and any claim of their participation therein was unknown to Jamieson & Co. prior to the latter date.

On September 11, Schwartz, Dupee & Company delivered to Jamieson & Company a letter of the former, dated Sept. 9, 1896, referring to their tender of the 700 shares, and stating that the sale was made by them as agents for Henry Clews & Company, "who may rightfully take any steps to enforce the contracts" or make settlement; and also a letter of Henry Clews & Company by their attorneys, dated Sept. 10, 1896, claiming such interest in the transaction and notifying that sale of the 700 shares would be made to the highest bidder at the rooms of the Chicago Real Estate Board on September 15, 1896, etc. On September 22 and 23, notices were given respectively that the sale had been adjourned to and was made on September 22.

On September 22, 1896, Schwartz, Dupee & Company made pretended sale of 700 shares of the stock (being the same transaction

set up in the bill by way of fixing the price for measuring damages, of which the following stipulation of facts is made:

"It is further admitted that the 700 shares of said stock alleged in the bill of complaint to have been sold on the 22nd day of September, 1896, were not delivered to Frank N. Gage, but immediately after said *said* shares of stock were delivered to Major J. W. Conley, one of the firm of Schwartz, Dupee & Company, by H. J. Davis, who conducted said sale on behalf of Henry Clews & Company, for safe keeping by said J. W. Conley; that afterwards and on the same day, said H. J. Davis delivered to said Frank N. Gage a memorandum in words as follows:

'SEPTEMBER 22, 1896.

'Sold to Frank N. Gage 700 shares of Diamond Match stock numbered A 680–688, inclusive, at $130 per share.

'HENRY CLEWS & CO.,
'Per ESTABROOK & DAVIS.'

"That thereupon said Gage wrote below said memorandum the following:

'CHICAGO, *September* 22, 1896. O K.'

'Please deliver to I. H. Waggoner, Esq., and accept his check in settlement.

'FRANK M. GAGE.'

"And thereupon said Gage redelivered said memorandum and said order to said H. J. Davis, who thereupon delivered the
178 same to Mr. I. H. Waggoner, together with an order on Schwarz, Dupee & Company to deliver said certificate of shares to said Waggoner, upon being paid the amount of $130 per share. That said Gage was employed by said Waggoner to bid at said sale, and that said Waggoner was acting for and on behalf of the complainants in this suit in the employment of said Gage.

"Complainants object to the foregoing admission being considered as evidence, for while admitting that these are the facts, at the same time they claim they are immaterial to the issues in this case, and object on the ground of immateriality."

The pretended sale was so made, for the reason that the exchange was then closed, pursuant to the rules, by order of the managers, notwithstanding a rule of the exchange which reads as follows:

"Should any member neglect to fulfill his contract on the day it becomes due, the party or parties contracting with him shall, after giving notice as required by section 2 of the preceding article, employ an officer of the board to close the same forthwith in the exchange by purchase or sale as the case may require, unless the price of settlement has been agreed upon by the contracting parties. In case of a failure of a creditor to close the contract as above, the price shall be fixed by the price current at the time such contract ought to have been closed under the rule. In all cases where an officer may be directed to buy or sell securities under this rule, the name of the member defaulting as well as that of the member giving the order, shall be announced. No order for the purchase or sale of securities

under this rule shall be executed unless made out in writing over the signature of the party giving the order, who shall state the reason therefor, and it shall be the duty of the officer who executes the order to endorse thereon the name of the purchaser or seller, the price and the hour at which the contract is closed, and hand the same to the secretary of the board, who shall within twenty-four hours ascertain whether the party for whose account the order was given has paid the difference, if any, arising from the transaction; if not, the secretary shall report the default to the president. The duty devolved upon the officers of the exchange under this rule shall be performed without charge. No party shall be permitted to supply offers to buy or sell securities closed for his account under the rule; and when a contract is closed under this rule, any action of the defaulter, direct or indirect, by which the prompt fulfillment of such contract is delayed, hindered, or evaded, to the detriment of the other contracting party, shall subject the offending party to suspension for not less than thirty days in the discretion of the governing committee, by a vote of two-thirds of the members present at the meeting. When contracts are closed out under the rule, any
179 member supplying the bid or offer, and not duly receiving or delivering the stock, as the case may be, renders himself liable to prosecution under this article. Should any stock thus sold not be delivered until the next day, the contract shall continue, but the defaulting party shall not be liable to pay such damage as may be assessed by the arbitration committee. The same rules as to notice, time and places that govern defaults in other contracts shall apply to borrowed securities, which on non-delivery or receipt, must be borrowed or loaned in open market except in case of actual default in receiving or delivering after notice to close the loan; then the same are to be bought or sold, as the case may be, for the account of the defaulter in the manner provided in this article."

SEAMAN, district judge, after the foregoing statement, delivered the opinion of the court.

Except for the fund or deposit alleged to constitute security for performance of the contract in question, a remedy for a breach rests at law, and equitable jurisdiction depends upon the existence of such fund to be administered or charged. And to maintain the bill it is further indispensible for the complainants to establish: first, an executory contract of purchase by Jamieson & Co., *bona fide* and enforceable in equity, secured by such fund; second, privity of the complainants in the contract and fund; and third, actual injury either suffered or impending through the alleged breach. Failing proof or admission of these requisites, or either of them, the bill is properly dismissed for want of equity.

From the opinion filed in the trial court it appears that dismissal was based on a finding of want of privity in the alleged contract; and the arguments at the bar and in the briefs of counsel upon both sides are mainly directed to that question in its various phases as presented by the peculiarities of the transactions. Other contentions relate to the measure of damages—whether the rules of the

exchange adopted by the parties furnish an exclusive method or measure to determine the amount of damages for a breach, and whether in any view the pretended sale offered on behalf of the complainants can be recognized. Underlying these contentions, however, on the indisputable testimony, this paramount question obtrudes itself: Is a valid contract shown, or one which equity will enforce even between proper parties? The importance of the inquiry thus arising is recognized as one affecting a branch of operations which appears to have countenance and extended practice in the commercial world, however infrequently its transactions are brought into courts of equity for adjustment. But it cannot be ignored when the purported contract is presented as the foundation for relief in equity, and neither silence nor acquiescence on the part of the litigants will excuse the court from its determination.

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Otherwise stated, the question for solution is whether the contract in proof was one of *bona fide* purchase and sale of stock, or was either a mere wagering transaction or a contract in options. In Irwin *v.* Williar, 110 U. S., 499, 508, the general rule governing such transactions is thus declared: "The generally accepted doctrine in this country is, as stated by Mr. Benjamin, that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods, nor any other means of getting them than to go into the market and buy them; but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer; and, if under guise of such a contract, the real intent be merely to speculate in the rise and fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void. In Embrey *v.* Jemison, 131 U. S., 336, 344, and in Bibb *v.* Allen, 149 U. S., 481, 492, this doctrine is reaffirmed and in the latter case is well distinguished as showing by the undisputed testimony that actual delivery was not only intended by both parties, but was expressly required by the rules of the cotton exchange governing the transactions.

Aside from the general rule, the contract in question is further subject to such statutory provisions of the State of Illinois as may be found applicable and sections 130 and 131 of the Criminal Code of that State (1 Starr & Curtis An. Stat., 2nd ed., pp. 1293, 1298) read as follows:

"SEC. 130. Whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain, or other commodity, stock of any railroad or other company, or gold, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any such commodities, shall be fined not less than $10 nor more than $1,000 or confined in the county jail not exceed-

ing one year or both; and all contracts made in violation of this section shall be considered gambling contracts, and shall be void.

"SEC. 131. All promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, drawn or entered into, or executed by any person whatsoever, where the whole or any part of the consideration thereof, shall be for any money, property or other valuable thing, won by any gaming or playing at cards, dice, or other
181 game or games, or by betting on the side or hands of any person gaming, or by wager or bet upon any race, fight, pastime, sport, lot, chance, casualty, election or unknown or contingent event whatever, or for the reimbursing or paying any money or property knowingly lent or advanced at the time or place of such play or bet, to any person or persons so gaming or betting, or that shall, during such play or betting, so play or bet, shall be null and void and of no effect."

These provisions were under consideration in Pearce *v.* Rice, 142 U. S., 28, 40, and were held to invalidate a contract which arose out of grain deals on the Chicago board of trade. Rulings by the supreme court of Illinois in Pearce *v.* Foot, 95 Ill., 99, Lyon *v.* Culbertson, 83 Ill., 33, and Pickering *v.* Cease, 79 Ill., 328, are there cited and applied; and the later cases of Pearce *v.* Foot, 113 Ill., 228, Cothran *v.* Ellis, 125 Ill., 496, Schneider *v.* Turner, 130 Ill., 28, and Soby *v.* The People, 134 Ill., 66, reaffirm such rulings and clearly hold that contracts which purport on their face to be absolute for sale or purchase are within the prohibition of the statute "if the real intention of both parties, at the time of making the contract, was to deal only in options, and make future settlement upon the basis of the difference in the market price, without the actual delivery of the grain or other commodity sold or purchased." (Soby *v.* The People, *supra.*)

Wherever the general doctrine against wagering transactions stands alone as the test of validity, it is well settled in actions at law that a contract of purported purchase and sale will stand upon the presumption which arises in its favor that actual delivery was intended, unless the proof clearly overcomes the presumption and establishes a mutual understanding by the parties that the transaction was a mere speculation in the market price, to be performed only by paying or receiving the amount of rise or fall in the market on the day named for delivery.

In the case at bar there is no substantial conflict in the testimony; and on its face the correspondence between the complainants and their brokers speaks of "sales" of Diamond Match stock for July account, of inquiries for the "difference" demanded to change to August account, and of changes then ordered and reported as made by allowing the "difference." It is not stated in terms by either party that delivery was not intended, nor does it appear in express terms in the correspondence or testimony that there was to be no actual delivery of the stock referred to on the purported sale. On the other hand there is neither averment nor pretense that the sellers had or controlled any shares of the stock, or procured or in-

tended to procure the same for delivery; and it is conceded that they had no stock at any time in the hands of their brokers, and no property in the stock of which pretended tender and sale
182 was made after the alleged default. As the rules of the stock exchange made distinct provision for "closing contracts" so entered into by paying "the difference" in market price, and the operations were conducted under such rules, by parties who were unquestionably acquainted with them, there is surely strong ground to infer an understanding by the parties that such was the contract, and not one of actual sale and delivery; or, as well described in Pearce v. Rice, 142 U. S., 28, 40, that they were "merely to speculate upon the rise and fall in prices, with an explicit understanding from the outset, that the property apparently contracted for was not to be delivered, and that the transactions were to be closed only by the payment of the difference between the contract price and the market price at the time fixed for the execution of the contract."

In discussing the authority conferred upon the broker by the complainants the brief of counsel presented on their behalf contains an interpretation of their contract which clearly discloses their understanding of the matter as above indicated, in the following paraphrase of the terms of these instructions:

"Please sell to whomsoever you think responsible seven hundred shares of Diamond Match stock at $229 per share, to be delivered August 31st. If the person to whom you sell should become dissatisfied with his bargain and you can find some one to take it off his hands at a lower price you are authorized to cancel the original contract and accept the substituted purchaser in the stead of the first purchaser; provided you are paid the difference in money. The money, of course, you will hold to our use. If the second purchaser in turn, should wish to withdraw, and you or he can find some one willing to take the shares at a still lower price, you are authorized to cancel the existing contract, as before, and in like manner to accept the third purchaser; provided you are paid the difference in cash. And this you may do on like terms whenever and as often as you see fit. On the other hand, if the price advances it may be expedient and convenient that we should, if possible, cancel the existing contract (with whomsoever it may be) and obtain a new contract at the current price, in which event you are authorized to pay and charge to our account whatever it costs to obtain such a novation, and this also you are authorized to do whenever and as often as you may deem expedient; for we have carefully studied this matter, and we take it, that by the process indicated, we will be in or out on the day of delivery precisely the difference between our original offer and the then market price."

In equity jurisprudence it is fundamental that "equity looks to the intent rather than to the form" and "will never suffer the mere appearance and external form to conceal the true purpose,
183 objects and consequences of a transaction;" that one who seeks relief must come open-handed with clean hands, and to obtain relief must clearly show that equity and good conscience are with him. In this view it is at least questionable whether relief can

be claimed on the mere form of this contract, resting alone on its presumptive force at common law, without "probing the conscience" of the party for the true object.

We are of opinion, however, that the transaction as disclosed clearly falls within the terms of the Illinois statute above cited, as interpreted by decisions of the supreme court of the State, and that neither the inquiry last suggested, nor the sufficiency of the proof to show a wagering contract under the common-law rule, require decision to ascertain the invalidity of the contract thus disclosed.

In Schneider *v.* Turner, 130 Ill., 28, these provisions are held applicable to a contract relating to the sale of shares of railway stock, and the proposition is refuted that the act merely invalidates gambling contracts, or such "option contracts as contemplate a settlement by differences." It is remarked in the opinion: "If that construction is the true one, why was the statute enacted at all? Nothing is more clearly and firmly established by the common law than that all gambling contracts are void. It is equally well settled that all contracts for the purchase and sale of property, with the understanding or agreement of the parties—whether that agreement is expressed on the face of the contract, or exists by secret understanding—that the property is not to be delivered or accepted, but the contract satisfied by an adjustment of the differences between the contract and market price, are mere wagers or gambling contracts, and void." It is then said that the act intends more than the condemnation of contracts "which were already gambling contracts and void;" that its manifest object "is to break down the pernicious practice of gambling on the market price of grain and other commodities. How is this object sought to be accomplished? There was or is nothing illegal or even immoral in an option contract within itself. The evil aimed at nevertheless grew out of such contracts. As said by Judge McAlister in the opinion referred to in Tenney *v.* Ford: 'In practice on the stock exchange it was often the intention of the parties that no stock should be delivered, but the transaction settled upon differences;' and by Judge Andrews, in the Bigelow case, *supra*, 'Contracts of this kind may be mere disguises for gambling.' In this case the parties might have intended, if appellants called for the stock, to settle on differences. The contract could have been made the disguise for gambling on the future price of stock of the North Chicago City railway. The question is not, Did they so intend? but did not the legislature regard such contracts as lying at the root of the evil aimed at and strike at them. The treatment is heroic, but the evil was most malignant. * * * The contract tested by the statute is void."

184 In the earlier case of Pickering *v.* Cease, 79 Ill., 328, this view is exemplified as follows:

"Agreements for the future delivery of grain, or any other commodity, are not prohibited by the common law, nor by any statute of the State, nor by any policy adopted for the protection of the public. What the law does prohibit, and what is deemed detrimental to the general welfare, is speculating in differences in market values. The alleged contracts for August and September come within this defi-

nition. No grain was ever bought and paid for, nor do we think it was ever expected any would be called for, nor that any would have been delivered had demand been made. What were these but 'optional contracts,' in the most objectionable sense; that is, the seller had the privilege of delivering or not delivering, and the buyer the privilege of calling or not calling for the grain, just as they chose. On the maturity of the contracts, they were to be filled by adjusting the differences in the market values. Being in the nature of gambling transactions, the law will tolerate no such contracts."

So in Pearce *v.* Foot, 113 Ill., 228, 239, it is said:

"Although the statutes being considered are highly penal, there is no warrant for construing them with any unreasonable strictness. They ought rather to have a just, if not liberal, construction, to the end the legislative intention may be accomplished, to prohibit all dealings in options in grains or other commodities. Nothing is productive of more mischievous results. Considerable fortunes secured by a life of honest industry have been lost in a single venture in 'options.' The evil is all the more dangerous from the fact it seemingly has the sanction of honorable commercial usage in its support. It is a vice that has in recent years grown to enormous proportions. Legitimate transactions on the board of trade are of the utmost importance in commerce. Such contracts, whether for immediate or future delivery, are valid in law and receive its sanction and all the support that can be given to them. It is only against unlawful 'gambling contracts' the penalties of the law are denounced, and no subtle finesse of construction ought to be adopted to defeat the end it is to be hoped may be ultimately accomplished."

However the terms "option" and "optional contracts" may be used and defined elsewhere the construction of this statute by the supreme court of the State is controlling here and invalidates the contract upon which the bill of complaint is founded. Such was the ruling in Lester *v.* Buel, 49 Ohio St., 240, where transactions were involved of like character on the Chicago board of trade, and were held to be within the provisions of the Illinois statute, and prohibited as well by a statute of Ohio of like import.

We are of opinion that the bill was properly dismissed for want of equity, and the decree is affirmed.

185 And afterwards, on the same day, to wit, on the third day of October, 1899, in the October term last aforesaid, the following proceedings were had and entered of record, to wit:

TUESDAY, *October* 3, 1899.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. William H. Seaman, district judge.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES B. CLEWS *vs.* MALCOLMB M. JAMIESON, ROLAND C. Nickerson, Henry F. Billings, *et al.*	533. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Illinois and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

186 And afterwards, to wit, on the nineteenth day of October, 1899, in the October term last aforesaid, came the appellants, by their counsel, Mr. H. D. Estabrook, and filed in the office of the clerk of this court their petition for rehearing, said petition being in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, January Session, A. D. 1899.

HENRY CLEWS, CHARLES M. FOSTER, and JAMES CLEWS, Appellants, *vs.* MALCOMB M. JAMIESON, ROLAND C. NICKERSON, HENRY F. BILLINGS, *et al.*, Appellees.	No. 533.

Petition for Rehearing.

To the honorable the judges of the court aforesaid:

Come now appellants, Henry Clews, Charles M. Foster, and James Clews, and petition your honors that a new hearing be al-
187 lowed herein.

Endorsed: Filed Oct. 19, 1899. Edward M. Holloway, clerk.

And afterwards, to wit, on the first day of February, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, *February* 1, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

Order.

It is ordered by the court that William H. Seaman, judge of the district court of the United States for the eastern district of Wiscon-

sin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

And afterwards, on the same day, to wit, on the first day of February, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

188 THURSDAY, *February* 1, 1900.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. William H. Seaman, district judge.

HENRY CLEWS ET AL. *vs.* MALCOLMB M. JAMIESON *et al.* } 533. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that petition for rehearing in this cause be, and the same is hereby, overruled.

189 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 188, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of Henry Clews, Charles M. Foster, and James B. Clews *vs.* Malcomb M. Jamieson, Roland C. Nickerson, and Harry F. Billings *et al.*, No. 533, October term, 1899, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this third day of March, A. D. 1900.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

190 [Endorsed:] File No., 17,709. U. S. C. C. of appeals, 7th circuit. Term No., 245. Henry Clews, Charles M. Foster, and James B. Clews, petitioners, *vs.* Malcolm M. Jamieson *et al.* Filed April 9th, 1900.

191 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Being informed that there is now pending before you a suit in which Henry Clews, Charles M. Foster, and James B. Clews are appellants and Malcomb M. Jamieson, Roland C. Nickerson, Henry F. Billings, *et al.* are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of Illinois, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
192 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of April, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

193 UNITED STATES OF AMERICA, }
Seventh Circuit. }

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Henry Clews, Charles M. Foster, and James B. Clews, appellants, *vs.* Malcomb M. Jamieson, Roland C. Nickerson, and Henry F. Billings *et al.*, appellees, is a full, true, and complete transcript of the record upon which said cause was heard in the United States circuit court of appeals for the seventh circuit, together with all proceedings in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this twenty-first day of April, A. D. 1900.

Seal United States Circuit Court of Appeals, Seventh Circuit.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[Endorsed:] Supreme Court of the United States, October term, 1899. No. 595. Henry Clews *et al. vs.* M. M. Jamieson *et al.* Writ of certiorari.

194 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court of Appeals for the Seventh Circuit.

HENRY CLEWS ET AL.
vs.
MALCOLM M. JAMIESON ET AL.

It is hereby stipulated by and between the parties hereto that the certified copy of the transcript of record and proceedings in the above-entitled cause in this court, now on file in the Supreme Court of the United States, case # 595, O. T., '99, may be taken as a return to the writ of certiorari heretofore, on the 18th day of April, 1900, issued by the Supreme Court of the United States and directed to this court.

April 20, 1900.

HAMLINE, SCOTT & LORD,
Solicitors for Foreman et al., Governing Com. Chicago Stock Exchange.
SAMUEL P. McCONNELL,
HORACE KENT TENNEY,
Counsel for Malcomb M. Jamieson et al.
HENRY D. ESTABROOK,
Of Counsel for Clews et al.

Endorsed: Filed April 21, 1900. Edward M. Holloway, clerk.

195 [Endorsed:] File No., 17,709. Supreme Court U. S., October term, 1900. Term No., 245. Henry Clews *et al.*, petitioners, *vs.* Malcolm M. Jamieson *et al.* Writ of certiorari and return. Office Supreme Court U. S. Filed July 25, 1900. James H. McKenney, clerk.